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## MANAGEMENT BULLETIN #013

TO: Owners/Agents of IFA Section 8 Properties

FROM: Roger Brown, Director, Section 8 Contract Administration 

DATE: 2 November 2004

SUBJECT: HUD Handbook 4350.3 REV-1, CHG-1, "Occupancy Requirements of Subsidized Multifamily Housing Programs"

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On 26 August 2004 HUD published on its website [hudclips.org](http://hudclips.org) HUD Handbook 4350.3 REV-1, CHG-1, "Occupancy Requirements of Subsidized Multifamily Housing Programs"

This notice establishes corrections to previous erroneous references and typos, provides for additional clarification on existing text and provides for new guidance. This change to the 4350.3 REV-1 is effective immediately upon publication.

A copy of the notice follows. The complete Handbook 4350.3 can be located directly from HUD at <http://www.hudclips.org/>

Please contact your IFA Asset Specialist or your HUD Project Manager with any questions about the implementation of this handbook change.

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Special Attention of:  
Regional Directors  
Multifamily Hub Directors  
Multifamily Program Center Directors  
Supervisory Project Managers  
Project Managers  
Contract Administrators and  
Owners and Management Agents of Projects covered by  
this Handbook.

**Transmittal** for Handbook No.: 4350.3 REV-1, CHG-1  
Issued: August 26, 2004

1. This Transmits

Handbook 4350.3 REV-1, CHG-1, "Occupancy Requirements of Subsidized Multifamily Housing Programs".

- A. Revised Chapter 2
- B. Revised Chapter 3
- C. Revised Exhibits 3-1, 3-3, 3-5, 3-8, 3-10, 3-12, 3-13, 3-14
- D. Revised Chapter 4
- E. Added Exhibit 4-3
- F. Revised Glossary

2. Explanation of Materials Transmitted

- A. Revised Chapter 2.

Corrected erroneous reference:  
Paragraph 2-32 C.2.a

- B. Revised Chapter 3

Corrected erroneous references and typos:

Paragraphs 3-6.D.5, 3-8 A.2-4, 3-12 G.1, 3-18, 3-18 A, 3-20 B Note, 3-22 B.1, 3-23 B.2, 3-23 E.2,  
Figure 3-5, Exhibits 3-1, 3-3, 3-5, 3-12, 3-13-, 3-14

Additional clarification on existing text:

Paragraph 3-12 B.1.b - removed "as determined by HUD".

Paragraph 3-12 B.5 - added paragraph references for mixed family.

Paragraph 3-12 K.1.a - added that at least one family member must be determined to be eligible.  
changed "prorated assistance" to "full assistance".  
added advice to owners related to verifying eligible immigration status.

Paragraph 3-12 K 1.b - changed "prorated assistance" to "full assistance".

Paragraph 3-12 K.2.b - added paragraph references for eligibility for temporary deferral of termination of assistance.

Paragraph 3-12 Q.1 and Q.2 - added clarification on eligibility for temporary deferral of termination of assistance.

Paragraph 3-12 Q 3.b (4) - added clarification that in the case of temporary deferral of assistance, the rent the family  
can pay for available affordable housing must be less than or equal to 125% of the family's Total Tenant Payment,  
including utilities.

Paragraph 3-18 B.1.c - added paragraph references for 202/8 eligibility requirements.

Paragraph 3-23 E.3.b - added age as a factor owners must take into consideration when developing occupancy  
standards.

Exhibits 3-8 and 3-10 - added clarification that for temporary deferral of termination of assistance, the family must  
have been in residence on June 19, 1995.

New guidance:

Paragraphs 3-8 D.4 - added requirement that police officers and other security personnel are subject to the same  
screening requirements as other applicants.





Paragraphs 3-16 and 3-33 - provides guidance on determining eligibility of students who are head or co-head of a household and verification requirements.  
Figure 3-1 - added independent student.

#### C. Revised Chapter 4

Corrected erroneous references and typos:  
4-15 F, 4-16 C.1.b, 4-19 C, 4-25 H

Additional clarification on existing text:

Paragraphs 4-5 A Note, 4-25 C Note and 4-25 D - added clarification for counting initial certifications for income targeting.

Paragraph 4-7 C.3.c Note and 4.d - added clarification that the owner's admission policy can include a time period for which an applicant must not have engaged in criminal activity prior to admission.

Paragraphs 4-11 A and 4-12 B.5- added clarification that an owner must have an Affirmative Fair Housing Marketing Plan if one is required by an assistance contract.

Paragraph 4-12 D - clarifies when owners must advertise.

Paragraph 4-14 B.5 - added BMIR.

New guidance:

Paragraph 4-7 B.6 - added requirement that police officers and other security personnel are subject to the same screening requirements as other applicants.

Paragraph 4-14 A.3 - added requirement that applicants provide self-certification of their race and ethnicity for data collection purposes by completing form HUD-27601-H.

Paragraph 4-27 E.3 - added that owners are not required to, but may if they wish to, conduct background checks on applicants applying for unassisted units or tenants living in an unassisted unit.

Paragraph 4-31 B 1 - added that at least one family member must be eligible.

Paragraph 4-31 B 2 - changed "prorated assistance" to "full assistance."

Exhibit 4-3 - added form HUD-27601-H, Race and Ethnic Data Reporting Form.

#### D. Glossary

Added definition for independent student.

#### 3. Implementation

These changes are effective immediately.

#### 4. Filing Instructions

Handbook 4350.3 REV-1

Remove :Insert :

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Chapter 2, page 29

Chapter 3 (whole chapter including exhibits)

Chapter 4 (whole chapter including exhibits)

Glossary, pages 15-30

Handbook 4350.3 Rev-1 CHG-1

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John C. Weicher  
Assistant Secretary for Housing--  
Federal Housing Commissioner

Distribution: W-3-1,



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**NOTE:** Chapters 1, 8, and 9 do not contain exhibits.



Subsection 2:  
Policies and Procedures to Ensure  
Nondiscrimination and Promote Accessibility

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- b. Applicants with Disabilities. If no current tenants require the special features of the accessible unit, the owner must then offer the unit to the next qualified applicant on the waiting list with a family member who needs the features of the accessible unit.
2. When neither a current tenant nor a qualified applicant requires the features of the available accessible unit:
  - a. Owners may offer the unit to another tenant or applicant in a manner consistent with the property's tenant selection policy and should incorporate into the lease an agreement that the tenant will move to a nonaccessible unit of the proper size within the same property when one becomes available. The lease should state whether the tenant or the owner will pay for the cost of such moves. (See paragraph \*3-23\* on occupancy standards and overcrowded and underutilized units, and paragraph 4-4 C on tenant selection plans.)
  - b. In the case where the members of the tenant household who required the special features of the accessible unit no longer reside in the unit, and where the lease permits, owners should require the remaining members of the household to move to a unit without accessibility features. The Department strongly suggests that owners incorporate this provision as an addendum to the lease to avoid placing themselves in a situation of having to retrofit additional units.

## **2-33 Moving Tenants Who Require Special Features Into Accessible Units**

- A. If a member of a tenant household becomes disabled with an impairment that requires special accessibility features and the tenant requests an accessible unit, an owner may move that tenant into an accessible unit in lieu of making the tenant's existing unit accessible and usable. (See Chapter 4 for more information) However, if a tenant needs only minor modifications to his or her unit, and does not need a fully accessible unit, the landlord should make the modifications and leave the project's fully accessible units available for tenants who need such units.
- B. If a member of a tenant household is a person who does not need specific accessible features, but whose disability requires that they live on a particular floor or location on the floor, the owner must move that tenant household to the new unit. If such a unit is not available, the owner should assign the tenant to the next available unit that meets the need of the tenant. This accommodation must be based on the tenant's disability-related need for the particular floor or location on the floor, and not based on the tenant's personal preferences.





**Example – When Owners Should Move Tenants to Accessible Units**

The head of household's grandmother, who is a member of the household, cannot climb the two flights of stairs to the unit because she has arthritis in her knees. The head of household requests that they be moved to a unit on the ground floor. The owner must move the household to the next available ground floor unit. If there are no ground floor units of the correct bedroom size expected to be available within a reasonable time (e.g., 30 days), the owner may make a unit available by requiring a tenant in a ground floor unit who is overhoused or underhoused to move to a unit within the project that is the correct size for the household.

**2-34 Owner Self-Evaluation**

- A. The Section 504 regulations required recipients of federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the requirements of this section of the Rehabilitation Act of 1973. The regulations required owners to have completed their self-evaluations no later than July 11, 1989.
- B. The Section 504 regulations establish owners' ongoing responsibility to operate their programs so that they are, when viewed in their entirety, accessible to and usable by persons with disabilities [24 CFR 8.24]. Although the regulatory deadlines for completing self-evaluations have now passed, the self-evaluation continues to be an excellent management tool for ensuring that the owner's current policies and procedures comply with the requirements of Section 504.
- C. HUD strongly recommends that owners periodically update their self-evaluations as one way to help ensure compliance. Updates are particularly important if there have been alterations to units or units have been added or demolished. When updating the self-evaluation and implementing its results, owners should take the following steps.

- 1. Evaluate current policies and practices, and analyze them to determine if they adversely affect the full participation of individuals with disabilities in the owner's programs, activities, and services.

**NOTE:** Information on technical resources regarding Section 504 accessibility requirements can be found in paragraph 2-26.

- 2. Modify any policies and practices that are not or may not be in compliance with Section 504.



## CHAPTER 3. ELIGIBILITY FOR ASSISTANCE AND OCCUPANCY

### 3-1 Introduction

- A. This chapter discusses the requirements and procedures for determining whether applicant families may participate in HUD-subsidized multifamily housing programs. Described in this chapter are steps an owner must follow to determine whether a family is eligible to receive assistance in a HUD-subsidized multifamily property and eligible to live in a specific property and unit. These activities are described in a sequential order; however, owners may deviate from this sequence based on project circumstances as long as they determine an applicant's eligibility before admitting the family to the property.
1. While this chapter provides the rules for eligibility, the processes for developing and maintaining a waiting list and correctly selecting an applicant for the next available unit are addressed in Chapter 4, Sections 3 and 4. Determining and verifying annual income, which is an eligibility requirement, is addressed in Chapter 5.
  2. Subsequent chapters in the handbook address activities that occur once an owner determines that a family is eligible for tenancy, such as leasing, recertification, terminations, billing, and reporting.
- B. This chapter is divided into three sections, each of which identifies the variations in eligibility requirements based upon type of subsidy. The three sections are as follows:
- **Section 1: Program Eligibility**, which describes the criteria by which the owner must determine whether a family is eligible to receive assistance;
  - **Section 2: Project Eligibility**, which describes the criteria by which the owner must determine whether a family is eligible to reside in a specific property (e.g., project eligibility limited to a specific population, unit size, and occupancy standards); and
  - **Section 3: Verification of Eligibility Factors**, which describes how the owner should collect information to document family composition, disability status, social security numbers, and other factors affecting eligibility for assistance.

### 3-2 Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations or by HUD. These terms are listed in Figure 3-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.
- B. The terms "disability" and "persons with disabilities" are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.
  2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

**NOTE:** See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

**Figure 3-1: Key Terms**

<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Assistance animals</li> <li>• Chronically mentally ill</li> <li>• Citizen</li> <li>• Developmentally disabled</li> <li>• Disabled family</li> <li>• Disabled household</li> <li>• Displaced family</li> <li>• Elderly family</li> <li>• Elderly person</li> <li>• Eligible noncitizen</li> <li>• Evidence of citizenship or eligible status</li> <li>• Family</li> <li>• Income limit</li> <li>• * Independent student *</li> </ul>	<ul style="list-style-type: none"> <li>• Live-in aide</li> <li>• Mixed family</li> <li>• National</li> <li>• Near-elderly family</li> <li>• Noncitizen</li> <li>• Nonelderly disabled family</li> <li>• PAC (Project Assistance Contract)</li> <li>• Person with disabilities</li> <li>• Physical disability</li> <li>• PRAC (Project Rental Assistance Contract)</li> <li>• Prorated assistance</li> <li>• RAP (Rental Assistance Payment)</li> <li>• Remaining member of a tenant family</li> <li>• Rent Supplement</li> <li>• Section 8</li> </ul>
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## **Section 1: Program Eligibility**

### **3-3 Key Regulations**

This paragraph identifies key regulatory citations pertaining to Section 1: Program Eligibility. The citations and their titles (or topics) are listed below.

**A. Income Limits**

- 24 CFR 5.609, and 5.653 (Annual income and income eligibility)

**B. Disclosure of Social Security Numbers**

- 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

**C. Consent Forms**

- 24 CFR 5.230, 5.232 (Consent by applicants and assisted participants and penalties for failing to sign consent forms)

**D. Restrictions on Assistance to Noncitizens**

- 24 CFR part 5, subpart E – Restrictions on Assistance to Noncitizens

### **3-4 Eligibility Determinations – General**

Owners are required to determine whether applicants are eligible to occupy the subsidized property and receive housing assistance. Eligibility is determined by federal statute and HUD regulation. For HUD programs, eligibility is only determined at move-in or at initial certification except as discussed in paragraph 3-15. HUD's general eligibility requirements are found in HUD's regulations at 24 CFR, part 5.

### **3-5 Key Program Eligibility Requirements**

Applicants and tenants must meet the following requirements to be eligible for occupancy and housing assistance. Subsequent paragraphs provide more detailed information about income limits, social security numbers, and consent forms.

- A. The family's annual income must not exceed program income limits.
- B. Applicants must disclose social security numbers for all family members at least 6 years of age and older and provide proof of the numbers reported.
- C. All adults in each applicant family must sign an Authorization for Release of Information prior to receiving assistance and annually thereafter.
- D. The unit for which the family is applying must be the family's only residence.

- E. An applicant must agree to pay the rent required by the program under which the applicant will receive assistance.
- F. Only U.S. citizens or eligible noncitizens may receive assistance under Section 8, Section 236, Rent Supplement, Rental Assistance Payment (RAP), and Section 202/8 programs.
- G. All information reported by the family is subject to verification.
- H. Various subsidy or insurance programs may impose additional occupancy restrictions.

### **3-6 Income Limits**

HUD establishes income limits and revises them annually to ensure that federal rental assistance is provided only to low-income families. This paragraph defines income limits and describes how the owner must use them to determine applicant eligibility for HUD-subsidized multifamily properties. The following paragraphs describe which schedules apply to each type of subsidy.

#### **A. Income Eligibility**

Except under limited circumstances, in order for an applicant to be eligible for occupancy, the applicant family's annual income must not exceed the applicable income limit (see paragraph 5-4 for the definition of annual income). This limit depends upon the type of subsidy and family size.

#### **B. Establishing Income Limits**

1. HUD establishes and publishes income limits for each county or Metropolitan Statistical Area (MSA) in the country. The income limits are based on the median income of the geographic area for which the limit is established. Therefore, the income limit for one city or county is likely to be very different from the income limit for another city or county.
2. Income limits are published annually and are available from the local HUD office or on-line at [www.huduser.org](http://www.huduser.org).
3. Income limits are based on family size and the annual income the family receives. (Chapter 5, Exhibit 5-1 describes what is included in annual income.)

**NOTE:** In the case of a property with multiple buildings that are subject to different income limits, the owner may use the higher income limit for the entire property.

#### **C. Timing of Income Eligibility Determinations**

1. Owners determine income eligibility prior to approving applicants for tenancy. Owners compare the family's annual income to the appropriate income limit prior to placing an applicant on the waiting list. However,

owners may wait until a unit is available to verify the applicant's income eligibility.

2. Owners are required to report the income status of each assisted tenant to HUD at least annually. Tenants whose incomes increase above the income limit continue to receive assistance so long as they qualify for assistance in paying rent under the applicable program rules. (See Chapter 5, Section 4, and Chapter 7, Section 1, for more information)

#### D. Program Income Limits

The income limits used to determine eligibility vary by program and are as follows: the Below Market Interest Rate (BMIR) income limit, the low-income limit, and the very low-income limit. A family's eligibility for assistance is based on the income limit applicable to the type of housing assistance the family is to receive. A family may be income-eligible for one program but have too high an income for another program.

In addition to the three income limits used to determine eligibility, there is a fourth – the extremely low-income limit – used for income-targeting in Section 8 projects but not for eligibility (see paragraphs 4-5, 4-15, and 4-25). These four income limits are presented in Figure 3-2.

**Figure 3-2: Income Limits**

All of these income limits are based on the median income for a metropolitan statistical area (MSA). This table shows the four income limits as a percentage of median income in an MSA.	
Income Limit	Median Income for the Area
BMIR income limit	95% of median income
Low-income limit	80% of median income
Very low-income limit	50% of median income
Extremely low-income limit	30% of median income

1. Section 8 Income Eligibility. Section 8 properties, depending upon the effective date of the initial Housing Assistance Payments (HAP) contract for the property, use either the low or very low-income limit.
  - a. Section 8 property owners must use the extremely low-income limit when selecting applicants to fulfill the income-targeting. (See paragraphs 4-5, 4-15, and 4-25.)

- b. Projects with HAP contracts initially effective on or after October 1, 1981, must admit only very low-income families unless HUD has approved an exception to admit families whose incomes are above the very low-income limit.
- c. Projects with HAP contracts initially effective prior to October 1, 1981, may admit families up to the low-income limit.

**NOTE:** Exceptions to income limits may be applicable under limited circumstances. See paragraph 3-7.

- 2. Section 236, Rent Supplement, and Rental Assistance Payment (RAP). These programs use the low-income limit to establish program eligibility.
- 3. Section 202 without assistance. This program uses the low-income limit to establish program eligibility, with the following two exceptions:
  - a. Section 202 projects for which the application was filed prior to December 15, 1962 are not subject to income limits.
  - b. For Section 202 projects where income limits above the low-income limit were approved by HUD prior to July 21, 1972, the approved higher income limits remain in effect for these projects.
- 4. Section 202/162 with Project Assistance Contracts (Section 202 PACs). These contracts use the low-income limit.
- 5. Section 202/811 with Project Rental Assistance Contracts (Section 202/811 PRACs). These assistance contracts use the very low-income limit (except properties funded in FY 1995, which use the low-income limit). Owners must receive approval from HUD Headquarters to admit families whose incomes are above the very low-income limit. (See \*paragraph 3-8 A 3 and 3-20 G.\* )
- 6. Section 221(d)(3) BMIR. This program uses the BMIR income limit, which is set at 95% of the area median income.
- 7. Summary. Refer to Figure 3-3 for a summary of the income limits used to determine eligibility for each program.
- 8. Projects with more than one type of subsidy. In projects with a combination of subsidy types, such as Section 221(d)(3) BMIR and Section 236 projects that also have Section 8 in a portion of the property, owners must use the eligibility income limit based on the type of assistance provided to the family. For example, applicants for a Section 236 project that receive Section 8 must qualify using the applicable Section 8 income limit.



**Figure 3-3: Income Limits by Program**

<b>Subsidy</b>	<b>Type of Income Limit</b>
Section 8 (pre-1981)	Low, very low, and extremely low-income limit
Section 8 (post-1981)	Very low and extremely low-income limit
Section 236	Low-income limit
Rent Supplement	Low-income limit
Rental Assistance Payment (RAP)	Low-income limit
Section 202 without assistance	Low-income limit See paragraph 3-6 D 3 for exceptions
Section 202 with Section 8 Assistance	Low, very low, and extremely low-income limit
Section 202 with Rent Supplement	Low-income limit
Section 202 PACs	Low-income limit
Section 202/811 PRACs, <u>except</u> those funded in FY1995	Very low-income limit
Section 202/811 PRACs funded in FY 1995	Low-income limit
Section 221(d)(3) BMIR	BMIR income limit

**E. Income Limits and Family Size**

1. Income limits vary by family size. Income limits are published based on the number of persons in the household (for example, 1 person, 2 persons, 3 persons) with increasingly higher income limits for families with more members.
2. Once the owner determines the applicable income limits based on the type of subsidy in the property, the owner must determine the appropriate limits to apply to a family based on family size. In determining the appropriate income limits, the owner must include some individuals as part of the family but exclude others.

3. When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following:

- a. Live-in aides. A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

- (1) Is determined to be essential to the care and well-being of the person(s);
- (2) Is not obligated for the support of the person(s); and
- (3) Would not be living in the unit except to provide the necessary supportive services.

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. Owners are encouraged to use a HUD-approved lease addendum that denies occupancy of the unit to a live-in aide after the tenant, for whatever reason, is no longer living in the unit. (See paragraph 6-12 C for more information.) The lease addendum should also give the owner the right to evict a live-in aide who violates any of the house rules.

- b. Foster children or foster adults. (See the Glossary for the definition.)
- c. Guests. (See the Glossary for the definition.)

4. When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

- a. Children temporarily absent due to placement in a foster home;
- b. Children in joint custody arrangements who are present in the household 50% or more of the time;
- c. Children who are away at school but who live with the family during school recesses;
- d. Unborn children of pregnant women.
- e. Children who are in the process of being adopted.
- f. Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent;

- g. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined in subparagraph f above; and
  - h. Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must not be listed as the head, co-head, or spouse on the lease or in the data submitted to TRACS but may be listed as other adult family member. This is true even when the confined person is the spouse of the person who is or will become the head. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income. See paragraph 5-6 C.
- 5. When determining income eligibility, the owner must count the income of family members only.

**F. Determining the Applicable Income Limit and Eligibility for Assistance**

- 1. After determining family size, the owner must calculate the family's annual income as described in Chapter 5, Section 1.
- 2. After determining family income, the owner must compare the family's annual income to the appropriate income limit for the program and family size.
- 3. Income-eligible families must have annual income that is less than or equal to the income limit for the family size.
- 4. Income-eligible families must also need the assistance. The amount the family would be required to pay using the applicable HUD rent formula must be less than the gross rent for the unit or market rent for Section 236 projects.

**NOTE:** This requirement does not apply to Section 202 PRACs or Section 811 PRACs.

- 5. **IMPORTANT:** A household does not need to have income to be eligible for assisted housing programs that provide rental assistance through an assistance contract (i.e., Section 8, Rent Supplement, RAP, Section 202 PAC, Section 202 or Section 811 PRAC).

**3-7 Exceptions to the Income Limits in Section 8 Projects**

**A. Post-1981 Universe**

On October 1, 1981, a law became effective limiting income eligibility for Section 8 assistance. At properties with Section 8 contracts effective on or after that date, only families at or below the very low-income limit are eligible for assistance. Under certain circumstances, the owner may request an exception to the very

low-income limits. For this universe of properties, HUD has 15% exception authority, which it allocates on a nationwide basis. Exceptions are described in subparagraph D below.

**B. Pre-1981 Universe**

In this universe of properties, the law restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Properties with Section 8 contracts effective prior to October 1, 1981, may admit applicants with incomes up to the low-income limit. HUD Headquarters is tracking the 25% restriction on a nationwide basis. The owner does not need to request an exception to admit low-income families to these properties.

**C. Eligible In-Place Tenants  
(Exceptions to the income limits that do not require HUD approval)**

In Section 8 properties where fewer than 100% of the units have Section 8 subsidy, some in-place, low-income tenants not receiving Section 8 may be eligible for assistance without HUD approval for an exception to the very low-income limit. This policy is permitted so that families will not be displaced when the circumstances are not the fault of the tenant. Owners may allocate Section 8 assistance to in-place, low-income families only under any of these conditions:

1. The tenant is being converted from RAP or Rent Supplement to Section 8.
2. The tenant is eligible to receive Section 8 in conjunction with the sale of a HUD-owned project,
3. The tenant is paying more than 30% of income toward rent, and is at or below the low-income limit (80% of median income).

**D. Exceptions to the Income Limits for Post-1981 Properties Requiring HUD Approval**

1. Conditions for exceptions. HUD will consider exceptions to the very low-income limit in a post-1981 property only under certain conditions.
  - a. If very low-income applicants on the waiting list are substantially fewer than the number of units in the project, the owner must market the units to attract very low-income families.
  - b. Requests for exceptions may fall into two categories: *individual tenant* exceptions for an individual family and *project or unit* exceptions for a specific number of units or for an entire property.
2. Individual tenant exceptions. HUD will consider approving owner requests for individual tenant exceptions under the following circumstances:
  - a. An in-place tenant would be displaced as a result of substantial rehabilitation under the Section 8 program; or

- b. A family is displaced by a Rental Rehabilitation Demonstration project or by rehabilitation or development assisted under Section 17 of the Housing Act of 1937.
- 3. Project or unit exceptions. HUD will consider approving owner requests under the following circumstances:
  - a. A project is financed by a State housing finance agency (HFA). The HFA published a policy before October 1, 1981, requiring some of the Section 8 units to be leased to families whose incomes exceed the very low-income limit; the HFA has enforced, and will continue to enforce, that policy.
  - b. The project is financed under Section 11(b) of the Housing Act of 1937 or under Section 103 of the Internal Revenue Code, and the very low-income limit would make it impossible for the owner to comply with financing documents. The bondholders or mortgage must have been enforcing, and must intend to continue enforcing, the income mix requirements of those documents.
  - c. During development processing, a local government approved a project on the condition that some of the Section 8 units be leased to low-income families with incomes above the very low-income limit. The local government must have submitted this requirement in writing to HUD, and the owner must have been enforcing it since the date of initial occupancy.
  - d. All or some of the units in the project were intended for a particular occupant group (e.g., persons with disabilities or elderly persons), and there are not enough very low-income applicants in that group.
  - e. A project's current waiting list and the owner's marketing efforts will not provide enough very low-income applicants to fill current or imminent vacancies, and at least one of the following conditions exists:
    - (1) A mortgage default is likely if HUD does not grant an exception because rental income and any Section 8 vacancy payments do not cover the project's essential operating costs and mortgage payments.
    - (2) Market studies and rental history show that the very low-income population is too small to provide enough applicants to sustain project occupancy.
- 4. The existence of one of these situations does not entitle an owner to an exception. HUD has no obligation to grant any exceptions.
- 5. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program

applicants any time that exceptions are not being used or after a periodic review, based on the findings of the review.

**E. Procedures for Requesting and Using Exceptions to the Very Low-Income Limit in Post-1981 Section 8 Properties**

1. Owners of post-1981 properties must submit a written request for an exception to the very low-income limit, with certification and documentation as specified in Exhibit 3-1, to the HUD Field Office.
  - a. The HUD Field Office makes the final decision on requests for exceptions.
  - b. In cases where HUD is not the Contract Administrator, the Contract Administrator must gather and submit all documentation with its recommendation to the HUD Field Office. The HUD Field Office makes the final decision on requests for exceptions.
  - c. If HUD determines that the criterion for any permitted exception has not been met, its letter to the owner will specify the reasons for its decision and advise the owner that an appeal may be considered if additional documentation is submitted to the HUD Multifamily HUB Director within 30 days. If the request is denied after submission of additional information, there are no further avenues of appeal.
2. When using exceptions, owners must adhere to the following:
  - a. Owners may not reuse individual tenant exceptions if the tenant for whom the exception was granted moves out or stops receiving Section 8 assistance.
  - b. Owners may reuse project or unit exceptions, however, until the HUD Field Office recalls them, or the timeframe permitting exceptions expires.

**F. Exceptions to Section 8 Income Targeting Requirements**

1. As discussed in paragraph 4.5, owners with Section 8 units are required to ensure that during a fiscal year at least 40% of the units that become available, together with initial certifications of in-place tenants, serve extremely low-income families. If an owner has actively marketed available units to extremely low-income families and has been unable to achieve the 40% target for admissions and initial certifications, the owner is permitted to rent to other eligible families after a reasonable marketing period has expired.
2. The owner must maintain complete records of the marketing efforts targeted to extremely low-income families, and must demonstrate that reasonable efforts were made to fill available units with extremely low-

income families. The owner must also demonstrate that an ongoing effort to meet the 40% requirement is being made.

3. HUD and/or the Contract Administrator will monitor compliance with this requirement.

### **3-8 Admitting Over-Income Applicants**

This paragraph describes the circumstances under which a property owner may admit families that do not meet income limits. The exceptions are listed by program.

#### **A. Section 8, Section 202/8, Section 202 PAC, and Section 202 PRAC and Section 811 PRAC Units**

If the owner is temporarily unable to lease all units to income eligible families, he may admit applicants with incomes that exceed the applicable program income limits with prior written HUD approval. The owner must request HUD approval as follows:

1. For units with Section 8 assistance, the request must be submitted to the Field Office in accordance with the procedures above in paragraph 3-7.
2. For units with Section 202/8 or Section 202 PAC assistance, the owner must submit the information specified in Situation #6 of Exhibit 3-1 to the Field Office. (See paragraph \*3-20 G.\*)
3. For Section 202 or Section 811 PRAC units, the owner must submit the information specified in Situation #6 of Exhibit 3-1 to the Field Office. The Field Office will forward the waiver request with a recommendation to HUD Headquarters for the final decision on the approval. (See paragraph \*3-20 G\*)
4. For Section 202/8, Section 202 PAC and Section 202 PRAC and Section 811 PRAC, also see paragraph \*3-20 G \*. for a discussion of waiver requests for approval to rent to families that are not elderly or disabled.

#### **B. BMIR Units**

The owner must not admit income-ineligible applicants without prior written HUD approval. Any ineligible families that are admitted must pay market rent.

#### **C. Section 236, Rent Supplement, and RAP Units**

1. In some situations, owners may admit families with incomes that exceed the applicable program income limits to Section 236, Rent Supplement, or RAP units without HUD approval if there are no income-eligible applicants available and fewer than 10% of the units are already occupied by tenants paying market rent.
2. Any ineligible families that are admitted must pay market rent.

**Example – Admission of Market Rent Applicants**

- Brookside Gardens is a 100-unit Section 236 project. Currently 92 tenants pay basic rent, 5 tenants pay market rent, and 3 units are vacant. The owner may fill the 3 vacant units with tenants paying market rent if there are no income-eligible applicants available and the owner has taken all reasonable steps to attract eligible families.
- Shady Grove is a 100-unit Section 236 project where 88 current tenants pay basic rent and 10 tenants pay market rent. The owner must fill the 2 current vacancies with income-eligible tenants.

3. The owner must obtain HUD's approval to admit over-income applicants who pay market rent if at least 10% of the units authorized under the interest reduction subsidy are already occupied by tenants paying market rent.
4. For determining the 10% of units described in subparagraphs 2 and 3 above, a unit is defined as follows:
  - a. For properties with Rent Supplement or RAP, "units" include only those units covered by the RAP or Rent Supplement contract.
  - b. For Section 236 properties, "units" include all units in the project.
5. Before admitting any ineligible applicants, the owner must take the following steps:
  - a. Admit all available eligible applicants, unless there is good cause for denying assistance.
  - b. Take all reasonable steps to attract eligible families, including using marketing activities most likely to attract eligible applicants and marketing outside the community or immediate area.
  - c. Place in the file of any ineligible tenant who is admitted, a written certification indicating that the requirements in subparagraphs a and b above have been completed.

**D. Admission of Police Officers or Security Personnel in Section 8 Properties**

1. For the purpose of deterring crime in and around the property, owners may lease a Section 8 unit to a police officer or security personnel who is over the income limits. Security personnel is defined as a qualified security professional with adequate training and experience to provide security services for project residents.
2. To be eligible, the police officer or security personnel must be employed full-time (at least 35 hours per week) by a governmental unit or private



- employer and be compensated by their employer for providing policing or security services.
3. Owners must submit a written plan to their HUD Field Office or Contract Administrator for authorization to lease to over-income police or security personnel. The plan must include:
    - a. A description of the existing social and physical conditions of the property and its surrounding area, and the benefits police or security would bring to the community and property;
    - b. The number of units in the property;
    - c. A detailed assessment of the criminal activities and how the safety of the tenants and security of the project is affected;
    - d. The qualifications of the police or security personnel and length of residency;
    - e. A description of how the owner proposes to check the background and qualifications of any security personnel who will reside in the project;
    - f. Disclosure of any family relationship between the police officer or security personnel and the owner. The owner includes all principals or other interested parties;
    - g. A description of the proposed rent, the current contract rent to the unit, the owner's annual maintenance cost for the unit and the amount of any other compensation by the owner to the resident police or security personnel. See paragraph 5-27 for guidance on establishing rent; and
    - h. Owner or authorized agent signature.
  4. \* Police officers and other security personnel that reside in subsidized units are subject to the same screening criteria as other applicants. \*
  5. The owner may use the applicable model lease with an added provision that states that the right of occupancy is dependent on continued employment as a police officer or security personnel. (See paragraph 6-12 C for more information)
  6. HUD or the Contract Administrator should notify the owners of approval or rejection within 30 days of submission. Unless there are extenuating circumstances, the local HUD Office should approve no more than 1% (or one unit if the property is less than 100 units) of the assisted units on the property for leasing to police or security personnel.

### 3-9 Disclosure of Social Security Numbers

Applicants must disclose social security numbers (SSNs) in order for the owner to make an eligibility determination. This paragraph explains the requirements and responsibilities of applicants or residents to supply owners with this information, the responsibility of owners to obtain this information, and the consequences for failure by either party.

#### A. Key Requirements

1. The head of household/spouse/co-head must disclose SSNs for all family members at least six years of age and older.
2. If no SSN has been assigned to a particular family member, the applicant must sign a certification stating that no SSN has been assigned.

#### B. Required Documentation

Applicants must provide documentation of SSNs. Adequate documentation means a social security card issued by the Social Security Administration (SSA) or other acceptable evidence of the SSN. See **Appendix 3** for documentation requirements.

#### C. Provisions for Accepting Applicants without Documentation of Social Security Numbers

1. When an applicant has a SSN but does not have the required documentation, the applicant may submit the SSN and certify that the number is accurate but that acceptable documentation could not be provided.
2. Individuals who have applied for legalization under the Immigration and Reform Control Act of 1986 will be able to disclose the social security numbers, but unable to supply the cards for documentation. Social security numbers are assigned to these persons when they apply for amnesty. The cards go to the Department of Homeland Security (DHS) until the persons are granted temporary lawful resident status. Until that time, their acceptable documentation is a letter from the DHS indicating social security numbers have been assigned.
3. Owners must accept the certification and continue to process the individual's application.
4. However, an applicant may not become a participant in the program unless the applicant submits the required SSN documentation to the owner. The applicant must provide SSN documentation to the owner within 60 days from the date on which the applicant certified that the documentation was not available.
5. If the owner has determined that the applicant is otherwise eligible for admission into the property, and the only outstanding verification is that of the SSN, the applicant may retain his or her place on the waiting list for

the 60-day period during which the applicant is trying to obtain documentation.

6. After 60 days, if the applicant has been unable to supply the required SSN documentation, the applicant should be determined ineligible and removed from the waiting list (see paragraph 4-20 A).
7. An owner may extend the time period for an additional 60 days if the applicant is at least 62 years old and unable to submit the required documentation within the first 60-day period.

### **3-10 Residence Criteria**

#### **A. Key Requirement**

Assisted tenants must have only one residence and receive assistance only in that unit. This rule is meant to ensure that the government pays assistance on only one unit for a family and provides assistance to as many eligible families as possible with available funding.

#### **B. Sole Residence Requirement**

1. A family is eligible for assistance only if the unit will be the family's only residence.
2. The owner must not provide assistance to applicants who will maintain a residence in addition to the HUD-assisted unit.

#### **C. Prohibition Against Double Subsidies**

Under no circumstances may any tenant benefit from more than one of the following subsidies: Rent Supplement, RAP, Section 202 PAC, Section 202 PRAC or Section 811 PRAC, or project-based Section 8 housing assistance, including Section 202/8.

1. Tenants must not receive assistance for two units at the same time.
2. Tenants must not benefit from Housing Choice Voucher assistance in a unit already assisted through project-based Section 8, Rent Supplement, RAP, Section 202 PAC or Section 202 and 811 PRAC.
3. This prohibition does not prevent a person who is currently receiving assistance from applying for an assisted unit in another property. The assisted tenancy in the unit being vacated must end the day before the subsidy begins in the new unit.

### 3-11 Consent and Verification Forms

#### A. Key Requirements

Adult members of a family must sign consent forms and, as necessary, verification documents, so that the owner can verify sources of family income and family size. The owner must consider a family ineligible if the adult members refuse to sign applicable consent and verification forms. See Chapter 5, Section 3, for additional detailed information on these forms.

1. All members of an applicant or tenant family who are at least 18 years of age and each family head and spouse regardless of age must sign the HUD-required consent forms (form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA* and form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*). Each family member age 18 and older must sign form HUD-9887 and form HUD-9887-A. It is not necessary to have each sign a separate form. All adults regardless of whether they report income must sign these forms.
2. All adult members of an applicant or tenant family must sign individual verification forms authorizing the owner to verify family income and other applicable eligibility factors (e.g., disability status).
3. Consent and verification forms protect the rights and privacy of tenants and applicants by allowing them to have control over any information collected about them. See **Appendix 15** for sample formats.
4. Owners must comply with the provisions of the federal Privacy Act as well as any state or local laws relating to confidentiality.

#### B. Who Must Sign Consent and Verification Forms

Consent forms must be signed by:

1. The head of household (regardless of age);
2. The spouse or co-head of household (regardless of age); and
3. Any other family member who is 18 years old or older.

#### C. Provisions for Refusal to Sign

If the applicant or tenant, or any adult member of the applicant's or tenant's family, does not sign and submit the consent form as required in 24 CFR 5.230, the following statements apply:

1. The owner must deny assistance and admission to the applicant; or

2. The owner must terminate assistance to the tenant (see paragraph 8-5 regarding terminations).

### **3-12 Restriction on Assistance to Noncitizens**

#### **A. Overview**

By law, only U.S. citizens and eligible noncitizens may benefit from federal rental assistance. Compliance with these rules ensures that only eligible families receive subsidy. These requirements apply to families making application to the property, families on the waiting list, and tenants. This paragraph describes the procedures owners must use to determine applicant eligibility based on citizenship/immigration status.

**NOTE:** See Chapters 4, 7, and 8 for other citizenship and eligible immigration status requirements. (Denial of assistance is addressed in paragraph 4-31, changes in subsidy are addressed in paragraph 7-11, and termination of assistance is addressed in paragraph 8-7.)

#### **B. Key Requirements**

1. Assistance in subsidized housing is restricted to the following:
  - a. U.S. citizens or nationals; and
  - b. Noncitizens who have eligible immigration status. \*
2. All applicants for assistance must be given notice of the requirement to submit evidence of citizenship or eligible immigration status at the time of application. The entity responsible for receiving the documentation, where possible, must arrange to provide the notice in a language that is understood by the individual if the person is not proficient in English. (See Exhibits 3-3 and 3-4 for a sample notice and its accompanying Family Summary Sheet.)
3. All family members, regardless of age, must declare their citizenship or immigration status. (See Exhibit 3-5 for a sample declaration format.)
4. Noncitizens (except those age 62 and older) must sign a Verification Consent Form (see Exhibit 3-6 for a sample) and submit documentation of their status or sign a declaration that they do not claim to have eligible status. Noncitizens age 62 and older must sign a declaration of eligible immigration status and provide a proof of age document. U.S. citizens must sign a declaration of citizenship. Owners may establish a policy of requiring additional proof of citizenship for those declaring to be U.S. citizens or nationals.
5. A mixed family—a family with one or more ineligible family members and one or more eligible family members—may receive prorated assistance, continued assistance, or a temporary deferral of termination of assistance.

\* See subparagraphs O, P and Q below for the requirements that must be met for a mixed family to be eligible for assistance. \*

6. Applicants who hold a noncitizen student visa are ineligible for assistance, as are any noncitizen family members living with the student. For noncitizen students with a citizen spouse or citizen children, see the rules in paragraph 3-12 R.2 below.

**C. Administration of Restriction on Assistance to Noncitizen**

Owners are responsible for administering the restriction on assistance to noncitizens in accordance with regulations. When administering the restriction, the owner must treat all applicants equally, applying the same noncitizen rule procedures without regard to race, color, national origin, sex, religion, disability, or familial status, and must comply with the nondiscrimination requirements described in Chapter 2 of this handbook.

**D. Protection from Liability for Project Owners**

HUD will not take any compliance, disallowance, penalty, or other regulatory action against an owner with respect to any error in the owner's determination of eligibility for assistance based on citizenship or immigration status when:

1. The owner established eligibility based upon verification of eligible immigration status through the verification system described in regulations and this handbook;
2. The owner provided an opportunity for the family to submit evidence in accordance with regulations and this handbook;
3. The owner waited for completion of DHS verification of immigration status in accordance with regulations and this handbook;
4. The owner waited for completion of the DHS appeal process provided in accordance with regulations and this handbook, if applicable; and
5. The owner provided an informal meeting in accordance with regulations and this handbook, if applicable.

**E. Reviewing a Family's Citizenship/Immigration Status**

Owners generally consider citizenship/immigration status once for each family, but they must do so more frequently if immigration status or family composition is likely to change (e.g., when a family member applies for a change in immigration status). (See Exhibit 3-7 for a sample sheet for tracking applicants' declarations and the owner's verification.)

1. Owners determine the applicant's citizenship or immigration status during the initial eligibility determination, prior to move-in.

2. As part of the annual or interim recertification process, owners must determine the citizenship/immigration status of tenants from whom the owner has not previously collected the proper documentation or whose documentation suggested that their status was likely to change.
3. If the status of a family member in a mixed family changes from ineligible to eligible, the family may request an interim recertification.
4. The required evidence of citizenship/immigration status for any new family member must be submitted at the first interim or regular recertification after the person moves to the unit.

**F. Applicability**

The restriction on assistance to noncitizens applies to all properties covered by this handbook except the following:

1. Section 221(d)(3) BMIR properties;
2. Section 202 PAC;
3. Section 202 PRAC; and
4. Section 811 PRAC.
5. Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.

**G. Notification to Applicants**

1. Owners must give each applicant, at the time of application, notification of the requirement either to submit evidence of citizenship or eligible immigration status or to choose not to claim eligible status. A sample notice is included in \* Exhibit 3-3 \* The notification must do as follows:
  - a. State that financial assistance is contingent on submission and verification of citizenship or eligible immigration status;
  - b. Describe the type of evidence that must be submitted;
  - c. Give the time period in which evidence must be submitted; and
  - d. State that assistance may be prorated, denied, or terminated if any or all family members are determined ineligible for assistance.
2. Owners may notify families that they are eligible for assistance, or for partial assistance, as a mixed family. A sample notification of the verification results and the family's eligibility status is included in Exhibits 3-10 and 3-11.

3. Owners must notify families in writing if they are found to be ineligible based upon citizenship/immigration status in accordance with requirements described in paragraph 4-31. The sample notification of the results of verification on noncitizen status included in Exhibits 3-8 and 3-9 includes appropriate language.

#### H. **Owner Preparation to Collect Documentation of Citizenship/Immigration Status**

Owners are required to verify with the Department of Homeland Security (DHS) the validity of documents provided by applicants. To do so, owners must:

1. Obtain computer software to install on the owner's personal computer, an access code and user ID by calling the Office of Multifamily Housing at HUD headquarters. HUD will record the required information and notify DHS to provide the computer software and access to the verification system to the owner. If more than one personal computer is used, it is necessary to request computer software and user IDs for each computer. Multiple users can use a single computer but a unique user ID is needed for each computer user.
2. Upon receipt of the software, access code and user ID, the owner is able to use the automated system to obtain primary and in many instances, secondary verification.
3. If the owner does not have a personal computer or a CD drive and Windows on their personal computer, it will be necessary to verify immigration status using the paper process. A completed Document Verification Request, Form G-845S, and photocopies of the immigration documentation must be mailed to the local immigration office to receive verification of validity of the documents.
4. **Appendix 2** of this handbook is the instruction manual providing specific and detailed instructions on use of the Systematic Alien Verifications for Entitlements System (SAVE) and interpretation of results of DHS verification information.

#### I. **Required Documentation of Citizenship/Immigration Status**

1. The owner must obtain the following documentation for each family member regardless of age:
  - a. From U.S. citizens, a signed declaration of citizenship. Owners may require verification of the declaration by requiring presentation of a U.S. birth certificate or U.S. passport.
  - b. From noncitizens 62 years and older, a signed declaration of eligible noncitizen status and proof of age;
  - c. From noncitizens under the age of 62 claiming eligible status:



- (1) A signed declaration of eligible immigration status;
  - (2) A signed consent form; and
  - (3) One of the DHS-approved documents listed in Figure 3-4.
2. Noncitizens not claiming eligible immigration status may elect to sign a statement that they acknowledge their ineligibility for assistance.

**J. Timeframes for Submitting Evidence of Citizenship/Immigration Status to the Owner**

1. Applicants must submit required documentation of citizenship/immigration status no later than the date the owner initiates verification of other eligibility factors. Because of the prohibition against delaying assistance to obtain verification of citizenship/immigration status, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts.
2. If the applicant cannot supply the documentation within the owner's specified timeframe, the owner may grant the applicant an extension of not more than 30 days, but only if the applicant certifies that the documentation is temporarily unavailable and additional time is needed to collect and submit the required documentation. Although the extension period may not exceed 30 days, the owner may establish a shorter extension period based on the circumstances of the individual case.
3. The owner must inform the applicant in writing if an extension request is granted or denied. If the request is granted, the owner must include the new deadline for submitting the documentation. If the request is denied, the owner must state the reasons for the denial in the written response. When granting or rejecting extensions, owners must treat applicants consistently.

**K. Prohibition Against Delay of Assistance**

1. Owners may not delay the family's assistance if the family submitted its immigration information in a timely manner but the DHS verification or appeals process has not been completed.
  - a. If a unit is available, the family has come to the top of the waiting list, and at least one member of the family has submitted the required documentation in a timely manner \* and has been determined to be eligible, the owner must offer the family a unit and provide full assistance to those family members whose documents were received on time. Because of the prohibition against delaying assistance, owners are advised to implement procedures to verify eligible immigration status in advance of other verification efforts. \*

- b. Owners continue to provide \* full \* assistance to such families until information establishing the immigration status of any remaining noncitizen family members has been received and verified.

**Figure 3-4: Acceptable DHS Documents**

- Form I-551, *Alien Registration Receipt Card* (for permanent resident aliens).
- Form I-94, *Arrival-Departure Record* annotated with one of the following:
  - ◆ "Admitted as a Refugee Pursuant to Section 207";
  - ◆ "Section 208" or "Asylum";
  - ◆ "Section 243(h)" or "Deportation stayed by Attorney General"; or
  - ◆ "Paroled Pursuant to Section 212(d)(5) of the INA."
- Form I-94, *Arrival-Departure Record* (with no annotation) accompanied by one of the following:
  - ◆ A final court decision granting asylum (but only if no appeal is taken);
  - ◆ A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (application filed was before October 1, 1990);
  - ◆ A court decision granting withholding of deportation; or
  - ◆ A letter from an asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).
- Form I-688, *Temporary Resident Card* annotated "Section 245A" or "Section 210."
- Form I-668B, *Employment Authorization Card* annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12."
- A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified.
- Form I-151, *Alien Registration Receipt Card*.
- Other acceptable evidence. If other documents are determined by the DHS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*.

**Example – DHS Verification Process Delayed**

John and Mary Yu brought in the immigration documents for themselves and their two daughters immediately upon the owner's request. John's brother, who will live with them, has not yet been able to locate his papers. The SAVE system could not provide primary verification on the Yus, and secondary verification had to be requested.

The Yus were the fourth family on the waiting list for a 3-bedroom unit, but their name has come to the top of the list more rapidly than expected. First, there were two unexpected move-outs; then, two of the families above the Yus declined the units offered. The Yus are eligible except for the missing immigration verification.

The owner must offer the Yus the available 3-bedroom unit. The owner will provide prorated assistance assuming all members are eligible, except John's brother. The prorated assistance will be 4/5 of full assistance. If the documentation collected later indicates that all five family members are eligible, full assistance will be provided.

2. Once the owner has determined the citizenship/immigration status of a family assisted prior to completion of the verification or appeal process, the owner must do as follows:
  - a. Provide full assistance to a family that has established the eligibility of all of its members;
  - b. Offer continued prorated assistance to a mixed family, or temporary deferral of termination of assistance \* (See subparagraph Q for eligibility requirements) \* if the family does not accept the offer of prorated assistance; or
  - c. Offer temporary deferral of termination of assistance to an ineligible family. At the end of the deferral period the family must either pay market rent or vacate the unit. (Mixed families are defined in subparagraph N below, and prorated assistance is described in subparagraph P. Temporary deferral of termination of assistance is addressed in subparagraph Q.)

**L. Verifying Information on Immigration Status**

Owners must verify the validity of documents provided by applicants or tenants. The personal computer method provides automated status verification when the information is contained in the Alien Status Verification Index (ASVI) database. It also automates the paper secondary verification process, which eliminates in most instances the completion of the paper Form G-845S. If the owner is unable to obtain the results using the automated primary and secondary verification method, the owner must attempt to obtain results using the secondary verification paper process.

1. Primary verification.
  - a. Owners must conduct primary verification of eligible immigration status only for persons claiming eligible immigration status.
  - b. Owners must conduct primary verification through the SAVE ASVI database, the Department of Homeland Security (DHS) automated system. After obtaining computer software, access code and user ID by contacting the Office of Multifamily Housing at HUD (see subparagraph H above), owners can access SAVE with a personal computer.
  - c. After accessing the ASIV database, the owner enters the required data fields. The personal computer system will display one of the following messages for immigration status confirmation on the screen.
    - (1) Lawful Permanent Resident
    - (2) Temporary Resident
    - (3) Conditional Resident
    - (4) Asylee
    - (5) Refugee
    - (6) Cuban/Haitian Entrant
    - (7) Conditional Entrant
2. Secondary verification. If the message "institute secondary verification" is displayed on the screen, the manual verification process must be used.
  - a. Within 10 days of receiving an "Institute Secondary Verification" response, the owner must prepare DHS Form G-845S, *Document Verification Request*. The owner must send DHS Form G-845S and photocopies of the DHS documents submitted by the applicant to the DHS office serving the property's jurisdiction. DHS Form G-845S is provided in Exhibit 4-2. Instructions for completing and mailing the DHS Form G-845S are found in Section 4 of the SAVE User Manual, Appendix 2 of this handbook.
  - b. The DHS will return to the owner a copy of DHS Form G-845S indicating the results of the automated and manual search.

**M. Appealing Determinations of Ineligibility**

1. The owner must notify the family in writing as soon as possible if the secondary verification process returns a negative result. A sample notice to the family is included in Exhibits 3-10 and 3-11. The sample notice

describes the tenant or applicant family's options. The family has 30 days from receipt of the notice to choose which option to follow. See paragraph 4-31 for additional information on denying assistance based upon ineligible immigration status.

2. The family may appeal the owner's decision directly to the DHS. The family must send a copy of the appeal directly to the owner. The DHS should respond to the appeal within 30 days.
  - a. If the DHS decision results in a positive determination of eligibility, the owner can provide the family with housing assistance.
  - b. If the DHS decision results in a negative determination of eligibility, the family has 30 days to request a hearing with the owner.

**N. Mixed Families**

1. A mixed family is one whose members include citizens and eligible immigrants as well as noncitizens without eligible immigration status.
2. Mixed families that were in occupancy and received full assistance prior to the verification of citizenship/immigration status may be eligible for one of three types of assistance.
  - a. Continued assistance if the family was receiving assistance prior to June 19, 1995 (see subparagraph O below);
  - b. Prorated assistance (see subparagraph P below); or
  - c. Temporary deferral of termination of assistance (see subparagraph Q below).
3. Applicant families that are mixed are eligible only for prorated assistance.

**O. Continued Assistance**

1. A mixed family who was receiving assistance on June 19, 1995, is entitled to continue receiving the same level of assistance if the following apply:
  - a. The family head, spouse, or co-head was a citizen or had eligible immigration status; and
  - b. The family did not include any members who did not have eligible immigration status, except for the head, spouse, parents of the head of household, parents of the spouse, or children of the head or spouse.
2. Eligibility for continued assistance must have been established prior to November 29, 1996.



3. If, after November 29, 1996, anyone is added to a family, including a head of household, spouse, parents of the head of household or spouse, or children of the head of household or spouse, the family is not eligible for continued assistance at the full level, but may receive prorated assistance (see subparagraph P below).

**P. Prorated Assistance**

If a family is eligible for prorated assistance and is not receiving continued assistance, and if the termination of the family's assistance is not temporarily deferred, the amount of assistance the family receives is adjusted based on the number of family members who are eligible compared with the total number of family members. The prorated assistance is calculated by multiplying a family's full assistance by a fraction.

**NOTE:** See Exhibits 3-12, 3-13, and 3-14 for more information on proration procedures regarding the restriction of assistance to noncitizens.

1. Section 8. For Section 8 assistance programs, the number of eligible people in the family divided by the total number of persons in the family determines the fraction. Then, this fraction is multiplied by the full assistance payment. The reduced assistance payment results in a revised tenant rent for the family.

**Example – Section 8 or Rent Supplement Prorated Rent**

Family A has four persons. Three are citizens, and one does not have eligible immigration status. The gross rent for the unit is \$500. The family's Total Tenant Payment (TTP) is \$100.

Gross rent	\$500
TTP	<u>-\$100</u>
Section 8 assistance	\$400
Fraction is	
<u>Number of eligible family members</u>	<u>3</u>
Total number of family members	4
Prorated assistance	$\$400 \times 3/4 = \$300$
Tenant rent increase (assistance less prorated assistance payment)	$\$400 - \$300 = \$100$
New family rent (TTP + tenant rent increase)	$\$100 + \$100 = \$200$

**Example – Section 8 Prorated Rent  
(with utility allowance)**

Family B has five persons. Three are citizens, and two do not have eligible immigration status. The contract rent for the unit is \$500. The utility allowance is \$30. The family's TTP is \$100.

Contract rent	\$500
Utility allowance	<u>+\$30</u>
Gross rent	\$530
TTP	<u>-\$100</u>
Section 8 Assistance	\$430
Fraction is	
<u>Number of eligible family members</u>	<u>3</u>
Total number of family members	5
Prorated assistance	$\$430 \times 3/5 = \$258$
Increase in TTP (assistance less prorated assistance)	$\$430 - \$258 = \$172$
New tenant rent (TTP + increase – utility allowance = tenant rent)	$\$100 + \$172 - \$30 = \$242$

2. Rent Supplement. The Rent Supplement paid on the family's behalf is the amount they would otherwise be entitled to, multiplied by the fraction for which the numerator is the number of eligible people in the family and the denominator is the total number of people in the family.
3. Section 236. For Section 236 properties, the fraction is the number of ineligible persons over the total number in the family. The proration increases the rent the family is otherwise paying by an amount equal to the difference between the market rent and the rent the family would otherwise pay, multiplied by the fraction.
4. Section 236 with RAP, Rent Supplement, or Section 8 LMSA. If a property receives a combination of Section 236 with RAP, Rent Supplement, or Section 8 LMSA assistance, the owner must prorate both the Section 236 portion of the assistance and the RAP, Rent Supplement, or Section 8 assistance payment. The owner determines the new prorated rent by calculating the difference between market rent and basic rent multiplied by the fraction of ineligible family members. To determine the family's rent increase, the owner adds this total to the assistance payment multiplied by the same fraction of ineligible family.



**Example – Project-Based Subsidy (Section 236) Programs**

Family C has four persons and currently pays the 236 basic rent. Three are citizens, and one does not have eligible immigrant status.

Basic rent	\$300
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Market rent	\$500
-------------	-------

Fraction is

<u>Number of ineligible family members</u>	<u>1</u>
Total number of family members	4

Rent increase	$\$500 - \$300 = \$200 \times 1/4 = \$50$
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New prorated rent	$\$300 + \$50 = \$350$
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**Q. Temporary Deferral of Termination of Assistance**

1. \* Families that were receiving assistance on June 19, 1995 under one of the programs covered by the non-citizen rules are eligible for temporary deferral of termination of assistance. If the following applies:
  - a. Family has no eligible members; or
  - b. Mixed family qualifies for prorated assistance (and does not qualify for continued assistance) and chooses not to accept the partial assistance.
2. The deferral allows the family time to find other suitable housing before HUD terminates assistance. During the deferral period, the family continues to receive its current level of assistance. \*
3. The initial deferral period is for six months and may be extended for an additional six-month period, not to exceed 18 months.
  - a. At the beginning of each deferral period, the owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

### Example – Project-Based and Individual Tenant Subsidy Programs Prorated Rent

Family D has four persons. Three are eligible immigrants, and one has elected not to contest ineligible status. The family's TTP is \$200. The gross rent for the family is the Section 236 basic rent, which is \$300. The market rent is \$500.

Market rent	\$500
Basic rent	\$300
TTP	\$200
Assistance payment	\$100
Fraction is	
<u>Number of ineligible persons</u>	<u>1</u>
Total number of family members	4

Section 236 calculation

Project-based subsidy (market rent less basic rent)  $\$500 - \$300 = \$200$

Project-based subsidy times fraction  $\$200 \times \frac{1}{4} = \$50$

#### RAP, Rent Supplement, or Section 8 Calculation

Assistance payment times fraction  $\$100 \times \frac{1}{4} = \$25$

New tenant rent (TTP + Section 236 proration + tenant based subsidy proration)  $\$200 + \$50 + \$25 = \$275$

b. Before the end of each deferral period, the owner must determine whether affordable housing is available to the family and whether to extend the deferral of termination of assistance.

(1) To extend a deferral period, an owner must determine that no affordable housing is available. The owner must inform the family of the owner's determination at least 60 days before the current deferral period expires. The owner's determination should be based on the following:

- A vacancy rate of less than 5% for affordable housing of the appropriate unit size in the housing market for the area in which the housing is located;
- The local jurisdiction's Consolidated Plan, if applicable;
- Availability of affordable housing in the market area; and

- Evidence of the family's efforts to obtain affordable housing in the area.
- (2) To terminate assistance, the owner must determine that affordable housing is available, or that the maximum deferral period has been reached.
  - (3) If eligible for prorated assistance, the family may request and begin to receive prorated assistance at the end of the deferral period.
  - (4) Affordable housing for the purpose of temporary deferral of assistance is housing that:
    - Is not substandard;
    - Is the appropriate size for the family; and
    - Can be rented by the family for an amount less than or equal to 125% of the family's \* total tenant payment (TTP),\* including utilities.

**R. Prohibition of Assistance to Noncitizen Students**

Noncitizen students and their noncitizen families may not receive assistance. Noncitizen students are not eligible for continuation of assistance, prorated assistance, or temporary deferral of termination of assistance.

1. A noncitizen student is defined as an individual who is as follows:
  - a. A resident of another country to which the individual intends to return;
  - b. A bona fide student pursuing a course of study in the United States; and
  - c. A person admitted to the United States solely for the purpose of pursuing a course of study as indicated on an F-1 or M-1 student visa.
2. This prohibition applies to the noncitizen student's noncitizen spouse and children. However, spouses and children who are citizens may receive assistance. For example, a family that includes a noncitizen student married to a U.S. citizen is a mixed family.

## Section 2: Project Eligibility

### 3-13 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 2: Project Eligibility. The citations and their titles (or topics) are listed below.

**A. Eligibility for Admission to Section 8 Projects**

- 24 CFR part 5, subpart D (Definitions for Section 8)

**B. Eligibility for Admission to Individual Section 202, Section 202/8, Section 202/162 PAC, Section 202 PRAC, and Section 811 PRAC Projects**

1. 24 CFR part 891, subparts A, B, C, and D (Section 202 PRAC and Section 811 PRAC projects)
2. 24 CFR part 891, subpart E (Section 202/8 and Section 202 PAC projects)

**C. Occupancy Standards**

- 24 CFR 236.745; 880.603; 881.601; 883.701; 884.214 and 219; 886.121, 125, and 132; 886.321, 325, and 329; 891.410 and 420; 891.610 and 620; and 891.750 and 760 (Selection and admission of assisted tenants, and occupancy limitations)

### 3-14 Program versus Project Eligibility

**A.** *Program eligibility* determines whether applicants are eligible for assistance.

**B.** *Project eligibility* establishes whether applicants are eligible to reside in the specific project to which they have applied. Three things may affect the match between an applicant and the applicant's eligibility for occupancy in a particular project:

1. The extent to which all or some of the units in a project are designated for specific family types, such as those who are elderly or disabled;
2. The project-specific occupancy standards established by the owner, the family size, and the unit sizes available in the project; and
3. In some instances, a family's intention to lease using a housing-choice voucher subsidy that may be used in some projects and not in others.

**C.** Although individual programs often serve more than one tenant population, individual projects might not.

- D. There are multiple steps in determining the match between a project's eligibility requirements and a particular applicant's eligibility to live in the project. Steps to review applications are:
1. Confirm the eligibility rules for the project;
  2. Determine the applicant family type in relation to project eligibility rules;
  3. Determine the current occupancy of project units in relation to the populations intended to be served;
  4. Compare the applicant's characteristics in relation to the availability of units; and
  5. Decide the appropriate response to the applicant: (1) meets eligibility and unit available, (2) meets eligibility but unit not available, or (3) does not meet eligibility.

### **3-15 Determining the Eligibility of a Remaining Member of a Tenant Family**

- A. Periodically, family composition changes after initial occupancy. If the qualifying person leaves the unit, a determination must be made as to whether the remaining member of the household will be eligible to receive assistance. Eligibility depends upon the type of project occupied and other issues.
- B. The following basic requirements for eligibility must be met for a person to qualify as a remaining member of a household:
1. The individual must be a party to the lease when the family member leaves the unit.
  2. The individual must be of legal contract age under state law.
  3. The remaining family member is defined in Section 202 and Section 811 as the surviving member or members of an elderly family or family with disabilities that was a party to the lease and living in the assisted unit with the now deceased member of the family at the time of his or her death.
    - a. The remaining family member, based on the death of the family member, is eligible to remain in the unit but must pay rent based on income. In this case, eligibility of the remaining family member, as defined by the death of the family member, is not reviewed.
    - b. If the individual who establishes eligibility for the project leaves the unit for any reason other than death in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC project, the owner must determine if the individual(s) still residing in the unit meet the eligibility requirements for the project, income and age or disability. If the individual is not eligible for the project, he/she may not receive rental assistance and depending upon the type of

project, he or she may or may not be allowed to remain in the unit. In a 202/8 or a Section 202 PAC project, the individual may remain in the unit but must pay contract rent. In a Section 202 or 811 PRAC project, the individual may not remain in the unit.

4. See Figures 3-5 and 3-6 for definitions used in determining project eligibility.

### **3-16 \* Determining the Eligibility of Students who are Head or Co-head of a Household**

- A. The individual must be of legal contract age under state law.
- B. The individual must have established a household separate from parents or legal guardians for at least one year prior to application for occupancy or the individual meets the U. S. Department of Education's definition of an independent student. (See the Glossary for definition of independent student)
- C. The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.
- D. The individual must obtain a certification of the amount of financial assistance that will be provided by parents, guardians or others signed by the individual providing the support. This certification is required even if no assistance will be provided. The financial assistance provided by persons not living in the unit is part of annual income that must be verified to determine eligibility and at annual recertification to determine rent. \*

### **3-17 Definitions of Elderly and Disability Used to Determine Project Eligibility**

Definitions to establish eligibility or obtain program benefits as an elderly family or person with disabilities vary by program and in the Section 202/8, Section 202 PAC and Section 202 and 811 PRAC programs eligibility can vary by project. Also, some projects receive assistance from more than one program. Figure 3-5 indicates which definitions apply by type of program. Figure 3-6 presents the relevant definitions of elderly and disabled families.

**Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary**

Type of Project	Definition of Elderly	Definition of Disability
<b>Section 8 New Construction</b> <b>Section 8 Substantial Rehabilitation</b> <b>Section 8 State Agency</b> <b>RHS Section 515/8</b> <b>Section 8 Property Disposition Set-Aside</b> <b>Section 231 with Section 8</b>	Definition A – Family and Elderly Family	Definition D – Disabled Family  Definition E – Person with Disabilities
<b>Section 236 (insured and uninsured)</b> <b>Section 236 (insured and uninsured) with Section 8 Loan Management Set-Aside</b> <b>Section 236 (insured and uninsured) with RAP</b> <b>Section 236 (insured and uninsured) with Rent Supplement</b> <b>Section 221(d)(3) BMIR with Rent Supplement</b> <b>Section 221(d)(3) BMIR with Section 8 Preservation Projects</b> <b>Section 221(d)(3) BMIR (without Section 8)</b>	Note: For Section 236 and 221(d)(3) properties, see Paragraph * 3-18B.*	Note: For Section 236 and 221(d)(3) properties, see Paragraph * 3-18B.*
<b>Section 202 without rental assistance</b>	Single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more (12 U.S.C. 1701q(d)(4) as added by P.L. 86-372(9/23/59)	None
<p>*NOTE: Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.</p>		

**Figure 3-5: Applicable Definitions for Elderly and Disability - Determining Project Eligibility Summary**

Type of Project	Definition of Elderly	Definition of Disability
<b>*Section 202/8</b>	Definition B – Elderly Family	Definition G – Disabled (Handicapped) Family Definition H – Person with Disabilities (Handicapped person) Definition I – Nonelderly Disabled (Handicapped) Family
<b>*Section 202 PAC</b>	NA	Definition G – Disabled (Handicapped) Family Definition H – Person with Disabilities (Handicapped person)
<b>Section 202 PRAC</b>	Definition C – Elderly Person	NA
<b>* Section 811 PRAC</b>	NA	Definition F – Disabled Household Definition H – Person with Disabilities

\* NOTE: Under the Section 202/8, Section 202 PAC and Section 811 Programs, project eligibility may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals, and developmentally disabled individuals.



**Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility***(taken from federal regulations as cited at each definition)***Elderly Definitions****Definition A – Family and Elderly Family. [24 CFR 5.403]****Family.** Family includes but is not limited to:

- (1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);
- (2) An elderly family;
- (3) A near-elderly family;
- (4) A disabled family;
- (5) A displaced family;
- (6) The remaining member of a tenant family; and
- (7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

**Elderly Family.** Elderly family means a family whose head or spouse or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

**Definition B – Elderly Family. [24 CFR 891.505]** Elderly families are:

- (1) Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older;
- (2) The surviving member or members of a family described in paragraph (1) living in a unit assisted under subpart E of this part (Section 202 loans) with the now deceased member of the family at the time of his or her death;
- (3) A single person who is 62 years of age or older; or
- (4) Two or more elderly persons living together or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

**Definition C – Elderly Person. [24 CFR 891.205]** An elderly person is a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

**Disability Definitions**

**Definition D – Disabled Family. [24 CFR 5.403]** A disabled family is a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

**(Continued)**

**Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility**

*(taken from federal regulations as cited at each definition)*

**Definition E – Person with Disabilities [24 CFR 5.403].** A person with disabilities for purposes of program eligibility:

- (1) Means a person who:
  - (i) Has a disability, as defined in 42 U.S.C. 423;
    - (A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
    - (B) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.
  - (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
    - (A) Is expected to be of long-continued and indefinite duration,
    - (B) Substantially impedes his or her ability to live independently, and
    - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
  - (iii) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that
    - (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
    - (B) Is manifested before the person attains age 22;
    - (C) Is likely to continue indefinitely;
    - (D) Results in substantial functional limitation in three or more of the following areas of major life activity:
      - a. Self-care,
      - b. Receptive and expressive language,
      - c. Learning,
      - d. Mobility,
      - e. Self-direction,
      - f. Capacity for independent living, and
      - g. Economic self-sufficiency; and
    - (E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(Continued)

**Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility**

*(taken from federal regulations as cited at each definition)*

**Definition E – Person with Disabilities (continued)**

- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- (4) Means person with disabilities (individual with handicaps), as defined in 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

**Definition F – Disabled Household. [24 CFR 891.305]** Disabled household means a household composed of:

- (1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;
- (2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well-being; or
- (3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part (Section 811 Capital Advance) with the deceased member of the household at the time of his or her death.

**Definition G – Disabled (Handicapped)\* Family. [24 CFR 891.505]** Disabled (handicapped) family means:

- (1) Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped);
- (2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part (Section 202 loans) with the deceased member of the family at the time of his or her death;
- (3) A single person with disabilities (handicapped person) over the age of 18; or
- (4) Two or more persons with disabilities (handicapped persons) living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being.

(Continued)

**Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility**

*(taken from federal regulations as cited at each definition)*

**Definition H – Person with a Disability (Handicapped Person).\*** [24 CFR 891.505 and 891.305] A person with disabilities means:

- (1) Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.
- (2) A person with a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:
  - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (ii) Is manifested before the person attains age 22;
  - (iii) Is likely to continue indefinitely;
  - (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
    - (A) Self-care,
    - (B) Receptive and expressive language,
    - (C) Learning,
    - (D) Mobility,
    - (E) Self-direction,
    - (F) Capacity for independent living, and
    - (G) Economic self-sufficiency; and
  - (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
- (3) A person with a chronic mental illness, i.e., a person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.
- (4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. (24 CFR 891.505)

**Note:** A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 program.

- (5) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers with alcoholism or drug addiction, provided they meet the definition of "person with disabilities" in Section 811 (42 U.S.C) 8013(k)(2). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in Section 811 will not be eligible for occupancy in a section 811 project. (24 CFR 891.305)

**Figure 3-6: Applicable Definitions of Elderly and Disability - Determining Project Eligibility**

*(taken from federal regulations as cited at each definition)*

**Definition I – Nonelderly Disabled (Handicapped)\* Family. [24 CFR 891.505]** A nonelderly disabled (handicapped) family means a disabled family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

**\* NOTE:** The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled, disability, or impairment* to reflect current statutes. The parenthetical reference to *handicapped* indicates that the term *handicapped* has been replaced with *disabled, disability, or impairment* in that definition.

### **3-18 Eligibility Requirements for Admission to Elderly Projects, By Program Type Covered by Title VI, Subtitle D of the Housing and Community Development Act of 1992**

Title VI, Subtitle D of the Housing and Community Development Act of 1992 (Title VI-D) authorizes owners to establish a preference for elderly families in certain Section 8 assisted properties that were designed primarily for occupancy by elderly families if certain requirements are met. Title VI-D also permits owners of certain other federally assisted properties that were designed in whole or part for the elderly to continue to restrict occupancy to elderly families in accordance with the rules, standards, and agreements governing occupancy at the time of development of the project if certain requirements are met. While owners must comply with all relevant sections pursuant to Title VI-D, owners should pay close attention to Sections 651 and 658 with respect to eligibility and tenant selection. \*Section 3-18 A \* provides guidance on the optional elderly preference for covered Section 8 properties. \*Section 3-18 B \* provides guidance on restricting occupancy to elderly families in other federal assistance programs.

#### **A. Owner-Adopted Preferences for Elderly, \* Disabled, Nonelderly Disabled, and Near-Elderly Disabled \* Families**

Section 651 of Title VI, Subtitle D of the Housing and Community Development Act of 1992 permits owners of "covered Section 8 housing projects" designed primarily for occupancy by elderly families to adopt a selection preference for elderly families. An owner may, but is not required to, implement this preference. If the owner adopts the preference, it must be implemented in accordance with the rules described in this paragraph.

1. Applicability. Owners of properties assisted through the following programs are eligible to implement this preference:
  - a. Section 8 New Construction;
  - b. Section 8 Substantial Rehabilitation;
  - c. State Housing Agency programs for Section 8 New Construction and Substantial Rehabilitation;
  - d. Rural Housing 515/8; and
  - e. Section 8 Property Disposition Set-Aside (applies only to properties that involve substantial rehabilitation).
2. Definitions. The following definitions are used when implementing this preference:
  - a. An elderly family is one in which the head of the household, co-head, or spouse is at least 62 years of age. (See Figure 3-6, Definition A.)

- b. A near-elderly family is a family whose head, spouse, or sole member is a person with disabilities who is at least 50 years of age, but below the age of 62; or two or more persons with disabilities who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62, living with one or more live-in aides.
  - c. A nonelderly disabled family is one in which the head of the household, co-head, or spouse is disabled and 18 to 49 years of age. (See Figure 3-6, Definition D.)
- 3. Owners must be able to demonstrate that the property was originally designed for occupancy primarily by elderly families to implement an elderly preference. Owners must be able to produce one primary source of information or two secondary sources of information showing that the project was intended to house elderly families.
  - a. Primary sources: Identification of the project (or portion of the project) as serving elderly families should be documented in at least one primary source such as:
    - (1) The application submitted in response to the notice of funding availability;
    - (2) The terms of the notice of funding availability under which the application was solicited;
    - (3) The regulatory agreement;
    - (4) The loan commitment;
    - (5) The bid invitation;
    - (6) The owner's management plan;
    - (7) Any underwriting or financial document collected at or before loan closing; or
    - (8) Application for Mortgage Insurance
  - b. Secondary sources. If an owner does not have at least one primary source, two or more secondary sources of evidence may be used such as:
    - (1) Lease records from the first two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older;

- (2) Evidence that services for elderly persons have been provided, such as services-funding by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;
  - (3) Project unit mix with more than 50% of efficiencies and one-bedrooms; and
  - (4) Other relevant historical data, unless clearly contradicted by other comparable evidence.
- c. Sources in conflict.
  - (1) If one primary source is contradictory to another primary source used to establish the use for which the project was originally designed, the owner cannot make the election of preferences for elderly families based upon primary sources alone.
  - (2) In any case, where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families or when primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.
  - (3) In the event that HUD staff is requested to make a decision based upon "totality of circumstances", HUD staff should thoroughly research HUD records prior to making such a decision. If there is uncertainty regarding the weight of the available source documents used for determining eligibility, HUD staff must render a decision that the project was not designed primarily to serve the elderly.
- 4. An owner is not required to obtain approval from HUD prior to implementing the elderly preference. Although the owner is not required to submit documentation to HUD prior to implementing the elderly preference, an owner must provide the documentation as evidence of eligibility to apply the preference upon HUD's request.
- 5. When implementing the preference, an owner must:
  - a. Notify nonelderly families on the waiting list of the decision to implement this preference and of the impact the decision will have on nonelderly families on the waiting list.
  - b. Reserve a percentage of the units for occupancy only by disabled families or individuals who are neither elderly nor near-elderly (collectively referred to as "nonelderly disabled persons/families") that is equal to the lesser of:



- (1) The higher of the percentage of units occupied by nonelderly disabled families on (i) January 1, 1992, or (ii) October 28, 1992; or
- (2) 10% of the total number of units in the project.

**NOTE:** Although the reservation of units is capped at 10% of the total number of units, the owner can exceed the 10% cap as long as the units exceeding the cap are leased in a nondiscriminatory manner.

#### **Example – Establishing the Number of Units for Nonelderly Persons with Disabilities**

An owner has a covered Section 8 housing property with 100 units. On January 1, 1992, nonelderly persons/families with disabilities occupied 10 of the units. On October 28, 1992, nonelderly persons/families with disabilities occupied 20 units.

- A. The owner would have to compare the number of units occupied by nonelderly disabled persons/families on January 1, 1992, (10 units) with the number of units occupied by nonelderly disabled persons/families on October 28, 1992, (20 units) and use the **higher** number. In this case, it would be **20 units**.
- B. 10% of 100 units = **10 units**

To obtain the percentage or number of units that must remain available for nonelderly disabled persons/families, the owner must take the number of units determined above for **Item A (20 units)**, compare with **Item B (10 units)**, and use the **lower** number for the number of units that must be reserved.

Therefore, Item B is less than Item A, and **the owner must reserve 10 units** for occupancy by nonelderly disabled persons/families.

**Note:** If an owner determines that there were no nonelderly persons occupying units on those two dates, the required number of units to be reserved for nonelderly persons with disabilities can be zero (0).

6. If an owner exceeds the established number of units and leases additional units to nonelderly disabled families and the units later become available for occupancy, the owner may fill the vacancies with elderly families/persons, as long as the established set-aside percentage of units is met.
7. The set-aside number of units for nonelderly disabled families is not unit specific. A nonelderly disabled family may occupy a unit without accessible design features. Elderly families may occupy any unit as long as the set-aside number of units for nonelderly persons with disabilities is preserved.
8. Owners may exceed the set-aside number of units for nonelderly disabled families and are encouraged to do so if the need exists in the community.

Owners who exceed the set-aside number of units are not required to continue to exceed the set-aside number of units.

9. If there is an insufficient number of elderly families available to fill the units designated for elderly families, owners may establish a preference for near-elderly persons with disabilities for these units.
10. If there is an insufficient number of nonelderly disabled families available for the units designated for nonelderly persons with disabilities, the owner may establish a preference for near-elderly persons with disabilities for these units.
11. If there are an insufficient number of near-elderly disabled families available, the owner shall make units generally available for occupancy by families who have applied and are eligible, without regard to preferences.

**B. Owner-Adopted Elderly Restrictions in Certain Federally Assisted Housing Projects that were Designed to Serve the Elderly**

Section 658 of Title VI of Subtitle D of the Housing and Community Development Act of 1992 (HCDA) permits owners of certain federally assisted projects to restrict occupancy in such projects (or portions of projects) to elderly families in accordance with the rules, standards, and agreements governing occupancy in effect at the time of the development of the project.

1. **Applicability.** Only owners of properties that were originally designed for the elderly and assisted through the following programs are eligible to apply this restriction:
  - a. Section 236;
  - b. Section 221(d)(3) BMIR; and
  - c. Section 202 of the Housing Act of 1959, as Section 202 existed before the enactment of the Cranston-Gonzalez National Affordable Housing Act (i.e., Section 202 projects developed prior to 1991). \*See paragraph 3-20 B for 202/8 eligibility requirements.\*

**NOTE:** In order to restrict occupancy to the elderly in accordance with Section 658, the project must have continuously operated solely as an elderly project.
2. **Definitions.** The following definitions are used when implementing this restriction:
  - a. For Section 236 projects (insured and noninsured with or without Rent Supplement, RAP, or LMSA) and for the Section 221 (d) (3)

BMIR projects (with or without Rent Supplement) the following definitions are used:

- (1) An Elderly person or family is defined as a household where the head or spouse is age 62 or older.
  - (2) A disabled or handicapped person or family is defined by the Section 202 definition in effect at that time the project was endorsed. See the definitions for Section 202 projects in Figure 3-5 for projects endorsed prior to the change of definition in 1974. In 1974 the definition of handicap was amended to include other categories of disabilities. See the definition for Section 202/8 in Figure 3-5)
- b. For the Section 202 Direct Loan Program funded from Fiscal Year 1960 through Fiscal Year 1964 the following definitions are used:
- (1) Elderly is defined as single people aged 62 or older; households the head of which (or the spouse) is aged 62 or more.
  - (2) Nonelderly Disabled are not included in the definition and are not eligible.
- c. For the Section 202 Direct Loan Program funded from Fiscal Year 1965 through Fiscal Year 1974 the following definitions and requirements are used:
- (1) Elderly is defined as single people aged 62 or more or households the head of which (or the spouse) is aged 62 or more.
  - (2) The definition of elderly was amended to include "handicapped" in 1965. A person shall be considered handicapped if such person is determined to have a physical impairment which is (a) expected to be of long-continued and indefinite duration; (b) substantially impedes his ability to live independently; and, (c) is of such a nature that such ability could be improved by more suitable housing conditions.
  - (3) Ten percent of the units in a Section 202 project for the elderly were designed for people with mobility impairments and could house persons (elderly or nonelderly) who required the accessibility features of the unit; a Section 202 project could also be developed just for non-elderly persons with physical disabilities.

- (4) To qualify for admission to one of the units for the elderly, the applicant must be an elderly family (see definitions in Figures 3-5 and 3-6).
- (5) To qualify for admission to one of the units specifically designed for persons with physical disabilities, the head or spouse must be at least 18 years old and have a disability requiring the accessible design features of the unit.

**NOTE:** Persons with degenerative conditions (e.g., AIDS, multiple sclerosis, or cancer) qualify for one of these units if they require the accessible design features of the unit.

- (6) Any Section 202 direct loan project developed specifically for persons with disabilities is not covered under Section 658.
- (7) Persons who meet the definition of a "person with disabilities" and who do not require the accessible features of these units may be admitted to the project only if they qualify as elderly for one of the units designed for elderly occupancy.
- (8) In assigning units designed for disabled persons needing accessible features, owners must treat elderly applicants with disabilities and nonelderly applicants with disabilities equally, unless one applicant has a preference adopted by the owner such as a residency preference or a preference for working families, disability or other groups as described in paragraph 4-6 C.

- 3. Owners must be able to demonstrate that the property was originally designed for occupancy only by elderly families in order to restrict occupancy to the elderly. Owners must be able to produce one primary source of information or two secondary sources of information showing that the project was intended to house elderly families.

- a. Primary sources. Identification of the project (or portion of the project) as serving elderly families in at least one primary source such as:

- (1) The application submitted in response to the notice of funding availability;
- (2) The terms of the notice of funding availability under which the application was solicited;
- (3) The regulatory agreement;
- (4) The loan commitment;

- (5) The bid invitation;
  - (6) The owner's management plan;
  - (7) Any underwriting or financial document collected at or before loan closing; or
  - (8) Application for Mortgage Insurance
- b. Secondary sources. If an owner does not have at least one primary source, two or more secondary sources of evidence may be used such as:
- (1) Lease records from the first two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse, or sole member is 62 years of age or older;
  - (2) Evidence that services for elderly persons have been provided, such as services-funding by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging;
  - (3) Project unit mix with more than 50% efficiencies and one-bedrooms; and
  - (4) Other relevant historical data, unless clearly contradicted by other comparable evidence.
- c. Sources in conflict
- (1) If a primary source establishes a design contrary to that established by another primary source upon which the owner would base support that the property is an eligible project, the owner cannot make the election of preferences for elderly families as provided by this paragraph based upon primary sources alone.
  - (2) In any case where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.
  - (3) In the event that HUD staff is requested to make a decision based upon "totality of circumstances", HUD staff should thoroughly research HUD records prior to making such a decision. If there is uncertainty regarding the weight of the available source documents used for determining eligibility,



HUD staff must render a decision that the project was not designed to serve the elderly.

4. An owner is not required to submit documentation that the project was originally designed for occupancy by the elderly for HUD approval prior to implementing the elderly restriction. An owner must produce the documentation as evidence of eligibility to apply the restriction when asked by HUD.
5. Waiving the Elderly Restriction. An owner may request to waive the elderly restriction due to market conditions and/or to maintain the economic soundness of the project. In such cases, HUD approval is required before the restriction can be waived and the waiting list opened to nonelderly persons. For example, if an owner of a project governed by 658 elects to continue to restrict occupancy to the elderly under this section of the Act, the applicants eligible for occupancy would be based on this restriction. However, if an owner lifts the restriction to fill a vacant unit in the project and rents to a nonelderly tenant, the owner may, but is not required to, retain the elderly restriction for those units previously occupied by non-elderly tenants. The owner may retain the elderly restriction only if the unit was rented to a nonelderly tenant due to market conditions and/or to maintain the economic soundness of the project. HUD will review the request, and if approved, the HUD approval is not to exceed three years. HUD approval must be obtained to extend the waiver beyond the three-year period. If HUD approval is obtained and there are eligible elderly persons on the waiting list, the owner may select elderly applicants in accordance with the elderly restriction over nonelderly tenants on the waiting list. The owner also has responsibility for updating the Tenant Selection Plan and notifying the nonelderly applicants currently on the waiting list within ten business days of such update. The owner must provide written notification and the notice must be sent to the applicant by certified mail, return receipt requested. Proof of notification to the applicants on the waiting list must be maintained in the project occupancy files.

### **3-19 Eligibility Requirements for Admission to Elderly Projects, By Program Type Not Covered by Title VI, Subtitle D of the Housing and Community Development Act of 1992**

#### **A. Section 231 Projects with Section 8 (not covered by Section 651) and/or Rent Supplement Contracts**

The Section 231 program is an elderly housing program that provided that some units may be specifically designed for persons with physical disabilities. A preference could be provided for those individuals who require the features of those units.

1. Projects or parts of projects for the elderly.

- a. A minimum of 50% of the units in a Section 231 project and a maximum of 100% of the units will have been designated at development as reserved for elderly persons or elderly families.
  - b. Any units specifically designated for elderly families must be occupied only by such families.
  - c. Elderly persons with disabilities are eligible to live in elderly units in Section 231 projects.
2. Units designed for persons with disabilities.
    - a. Owners must give a preference for any unit designed for persons with disabilities to those persons with disabilities of any age who need the features of the units.
    - b. The applicable definition of a person with a disability is referenced in Figure 3-5.
    - c. Owners that wish to serve a greater percentage of persons with disabilities than the percentage specified in the Regulatory Agreement or other loan agreements may do so upon receiving written approval from HUD.

**B. Section 221(d)(3) with a Rent Supplement Contract;**

1. Projects designed entirely for the elderly must restrict occupancy to elderly families or elderly persons. By their very nature, these projects have no units designed or reserved for nonelderly persons with disabilities.
2. Projects designed in part for the elderly, which have a specific number of units with accessible features designed for persons with disabilities, may restrict occupancy of units without accessible features to elderly families. Those projects cannot restrict occupancy to the elderly for those units designed for persons with disabilities as nonelderly persons with disabilities are also eligible to occupy those units. For units in the project that are designed for persons with disabilities who need accessible units, owners may not give elderly persons with disabilities priority over nonelderly persons with disabilities.

**C. Prepaid Projects with Formerly HUD-Insured Mortgages Under Section 221, Section 231, Section 8 not covered by Title VI D or Property Disposition Set-Aside that does not involve substantial rehabilitation**

Owners may restrict occupancy in the elderly units in these projects to only elderly families, but are not required to do so. These projects may also have accessible units. For the accessible units:



1. Owners may not give elderly persons with disabilities priority over nonelderly persons with disabilities.
2. A member of the family must meet the definition of "a person with a disability" and have a disability that requires the accessible features of the unit.

**3-20 Eligibility for Admission to Individual Section 202, Section 202/8, Section 202 PAC, and Section 202 and Section 811 PRAC Projects**

- A. Section 202 (SH) projects serve the elderly as defined in Definition B in Figure 3-6.
- B. Section 202/8 projects for the elderly serve:
  1. Elderly families as defined in Definition B in Figure 3-6; and
  2. For 10% of the units which are accessible, persons (elderly or nonelderly) who require the accessible features of the unit.

**NOTE:** When assigning accessible units, owners must treat equally elderly and nonelderly applicants with disabilities who require the accessible features of the unit, unless one applicant has an owner-adopted restriction or preference. See paragraphs \*3-18 B\* and 4-6 C.

- C. Section 202/8 and Section 202 PAC projects for persons with disabilities serve one or more of the following statutorily recognized categories of disability based upon the population to be served as described in the application for funding and defined in Definition H in Figure 3-6.
  1. Persons with physical disabilities;
  2. Persons with development disabilities; and/or
  3. Persons with chronic mental illness
- D. Section 202 PRAC projects serve a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy. See definition C in Figure 3-6.
- E. Section 811 projects serve one or any combination of the following statutorily recognized categories of disability based upon the population to be served as described in the application for funding and defined in definition H in Figure 3-6.
  1. Persons with physical disabilities;
  2. Persons with developmental disabilities; or
  3. Persons with chronic mental illness.

In addition, sponsors of Section 811 projects may propose in their applications to restrict occupancy to a subcategory of one of the statutorily recognized categories of disability (e.g., AIDS is a subcategory of physical disability), provided they do not deny occupancy to any otherwise qualified person with a disability in the overall category that the subcategory falls under.

- F. Applicants with disabilities who meet the eligibility requirements for admission to a Section 202/8 project for the elderly or for persons with disabilities or a Section 811 project for persons with disabilities cannot be excluded on the basis of having another disability in addition to the one served by the particular project.

**Examples – Eligible Applicants with Disabilities**

- An owner of a project with accessible units cannot exclude an otherwise eligible person with a disability requiring an accessible unit, who also has another disability such as chronic mentally illness.
- An owner of a project for the chronically mentally ill cannot exclude an otherwise eligible person from the project because of his or her physical disability.

G. Leasing Units to Non-Eligible Families

1. If the owner is temporarily unable to lease all units to eligible families, he may request HUD approval to lease one or more units to families that do not meet the income eligibility requirements of 24 CFR Part 5 as follows:
  - a. Section 202/8 or Section 202 PAC
    - (1) A written request for a waiver must be submitted to the HUD Field Office in accordance with Exhibit 3-1.
    - (2) The request must provide documentation of the owner's continuing marketing efforts to attract eligible applicants and that an increased level of occupancy will prevent financial default and foreclosure.
    - (3) HUD's approval of a request must be for a limited time – initially one year. HUD may impose other terms and conditions to the approval that are consistent with program objectives and necessary to protect the loan.
    - (4) HUD may reduce the number of units covered by either a HAP or PAC contract if the owner does not comply with the requirements for leasing to families that do not meet the eligibility requirements; or, if HUD determines that the owner's inability to lease to families that do not meet the eligibility requirements is not a temporary problem.

b. Section 202 PRAC or Section 811 PRAC

The owner's written request providing the information specified in Situation 6 of Exhibit 3-1 must be submitted to HUD Headquarters with the recommendation of the HUD Field Office.

2. If permitting over-income families to lease one or more units is not sufficient to solve the vacancy problem, in order to protect the financial viability of the project, an owner may request approval to serve a population other than the one(s) it was approved to serve.
  - a. A request to waive the age requirement for a Section 202 project for the elderly must provide documentation of the owner's continuing marketing efforts to attract eligible applicants and that an increased level of occupancy will prevent financial default and foreclosure. The request with the recommendation of the HUD Field Office is sent to the Multifamily Hub for approval except that in the case of a Section 202 PRAC project, the request and recommendation must be sent by the Multifamily Hub to Headquarters for approval.

H. For projects serving persons with disabilities, the owner must apply to the HUD Field Office for permission to serve a different disabled population. The owner must demonstrate a plan to the HUD Field Office that shows the following:

1. The owner can adequately serve the proposed disabled population based on past experience in serving the proposed population;
2. Funds are available from the state or local government or from other outside sources to pay for any necessary supportive services and a written commitment for funding is provided by the source or the owner;
3. The need for the original occupancy category no longer exists;
4. The current tenants can choose to remain in the project or move. If the tenants remain, the owner can begin housing persons in the newly approved category only as vacancies occur; and
5. There are sufficient subsidized units available in the area to house current project tenants who are willing to move, as well as prospective applicants in the newly approved category.

The request and recommendation of the HUD field office is sent to the HUD Multifamily HUB Director for approval.

### 3-21 Applicants with Housing Choice Vouchers

Owners may receive inquiries or applications from families wishing to use a Housing Choice Voucher in their property. The Housing Choice Voucher program is a form of rental subsidy administered by public housing agencies (PHAs) that allows families to

rent units in the marketplace and receive a subsidy from the PHA. The rules governing the use of vouchers in multifamily projects vary depending upon the type of subsidy operating at the project.

**A. 100% of Units Receive Assistance under an Assistance Contract**

Owners may not admit an applicant with a voucher, unless the applicant agrees to give up the voucher prior to occupancy. Before admitting such applicants, owners must inform voucher holders of the following:

1. The family must be placed on the project waiting list and must give up the voucher when the family moves into the project.
2. If the family later moves out of the project, the project subsidy will not move with the family as it does with a voucher; and
3. The family will need to reapply to the PHA to receive another voucher.

**B. Partially Assisted Properties**

1. Owners may accept applicants with the housing choice vouchers into units that do not already have a form of rental assistance such as Section 8, RAP, Rent Supplement, Section 202 PAC, or Section 202 and Section 811 PRAC. Owners may not admit an applicant with a voucher to a unit with Section 8, RAP, or Rent Supplement, Section 202 PAC, or Section 202 and Section 811 PRAC unless the applicant agrees to give up the voucher prior to occupancy.
2. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed. Since these limits vary by locality, owners should discuss rent and subsidy limitations with the local PHA. If the owner accepts a voucher holder, the PHA will perform annual inspections to ensure that the unit meets housing quality standards, recertify the family annually, and make the assistance payments to the owner.

**C. Section 236, Section 221(d)(3) BMIR, and Section 202 Units (without Assistance Contracts)**

Owners may accept applicants with the housing choice vouchers into their units. As described in subparagraph B.2 above, the PHA and HUD may limit rents and subsidies. Also, the PHA will conduct annual unit inspections and recertify family income annually prior to making assistance payments.

**D. Previously HUD-Owned Projects**

1. Previously HUD-owned projects must give a preference to families holding vouchers. (This preference is required by the sales contract and deed executed between HUD and the owner.)

2. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed. Because these limits vary by locality, owners should discuss rent and subsidy limitations with the local PHA. If the owner accepts a voucher holder, PHA will perform annual inspections to ensure that the unit meets housing quality standards, recertify the family annually, and make the assistance payments to the owner.

### 3-22 Eligibility of Single Persons

- A. HUD does not restrict the admission of single persons to assisted housing.
- B. Section 8 Housing Limited to Single Sex Occupancy
  1. Established HUD policy has traditionally allowed universities to separate students according to gender and to provide separate bathroom facilities by gender \*based\* on compelling privacy reasons. See implementing regulations to Title IX of the Education Amendments of 1972, as amended, 45 C.F.R. Sections 86.32 and 86.33.
  2. The Department also believes that in certain other limited circumstances, limiting occupancy of Section 8 programs to members of one sex may not violate the Fair Housing Act, although the legality of the practice is not settled.
    - a. The Department is aware that under Section 42 of the Internal Revenue Code, housing "must be for use by the general public" to receive Federal low-income housing tax credits. Under Internal Revenue Service interpretations, a housing facility will be deemed to qualify as being "for use by the general public" if it does not violate any HUD policy governing nondiscrimination as expressed in a HUD handbook. This Handbook should not be construed to ban single sex facilities, since the issue as to whether limiting housing to one sex is permissible depends on the facts and circumstances of the particular case.
    - b. The Department does not interpret the Internal Revenue Code to require housing providers to obtain a certification from HUD that they are operating in compliance with nondiscrimination requirements as a prerequisite to obtaining the tax credit or as authorizing or requiring HUD to issue such certifications. This Handbook should not be construed to suggest that facilities which have received the tax credit in the past are operating in violation of the Fair Housing Act.
    - c. However, assisted housing providers who wish to do so, may contact HUD Field Office personnel for guidance on the applicability of the Fair Housing Act to their particular housing facility.

- d. Guidance provided by the Department would evidence a staff opinion, based on the information provided at that time, whether the housing facility is operating in accordance with HUD policy governing nondiscrimination as expressed in the HUD handbooks.
- e. However, if a complaint of discrimination were to be filed with HUD alleging that the policy is discriminatory, such guidance would not preclude the Department from determining that the policy is discriminatory, since such a determination can only be made by the responsible HUD officials after a full investigation based on all facts and circumstances. In addition, it should be noted that such guidance cannot insulate housing providers from potential private suits by persons who may feel aggrieved by the policy.

### 3-23 Occupancy Standards

#### A. Overview

- 1. Owners must develop and follow occupancy standards that take into account the size and number of bedrooms needed based on the number of people in the family.
- 2. Occupancy standards serve to prevent the over- or underutilization of units that can result in an inefficient use of housing assistance. Occupancy standards also ensure that tenants are treated fairly and consistently and receive adequate housing space. By following the standards described in this paragraph, owners can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law. Occupancy standards must be part of an owner's tenant selection procedures. Refer to paragraph 4-4 for more details on developing tenant selection procedures.

#### B. Key Requirements

- 1. Owners of all properties subject to this handbook, including subsidized housing cooperatives, must assign a family to a unit of appropriate size, taking into consideration all persons residing in the household.
- 2. Owners should have written standards describing the project eligibility criteria. Owners have some discretion in developing specific occupancy standards for a property, as long as the standards do not violate fair housing requirements or contain prohibited policies. See \* Exhibit 3-2 \* for HUD policy guidance.
- 3. The owner's occupancy standards must comply with the following:
  - a. Federal, State, and local fair housing and civil rights laws;
  - b. Tenant-landlord laws;

- c. Zoning restrictions; and
- d. HUD's Equal Opportunity and nondiscrimination requirements under HUD's administrative procedures.

**C. Timeframe for Applying Occupancy Standards**

- 1. Owners apply their occupancy standards before assigning the family to a unit. Owners should review family size and occupancy standards prior to completing all of the required verifications so that if the property cannot accommodate the family, the owner may immediately inform the family of its ineligibility.
- 2. Owners also compare family composition to occupancy standards when there is a change in family size. This comparison is done to determine whether the family needs to transfer to another unit.

**D. Prohibition of Occupancy Standards that Exclude Children**

- 1. The Fair Housing Act prohibits housing providers from discriminating on the basis of familial status, making it illegal to discriminate against families because of the presence of children.
- 2. Owners may neither exclude families with children from their properties, nor may they develop policies or procedures that have the purpose or effect of prohibiting children (e.g., policies in tenant selection plan, occupancy standards, house rules).
- 3. Owners may not exclude otherwise eligible elderly families with children from elderly properties or elderly/disabled properties covered by this handbook.

**E. General Occupancy Standards**

- 1. Owners have discretion in developing occupancy policies that meet the needs of the specific property. HUD does not prescribe specific policies owners must implement but provides guidelines owners must follow when developing written occupancy standards.
- 2. HUD's occupancy guidelines are provided in \* Exhibit 3-2 \*. Generally a two-persons-per-bedroom standard is acceptable. An owner may establish a different standard for assigning unit size based on specific characteristics of the property (e.g., some bedrooms are too small for two persons).
- 3. An owner's occupancy standards establish the size of the unit a family will occupy, but owners must avoid making social judgments on a family's sleeping arrangement. For example, it is not for the owner to determine whether an unmarried couple may share the same bedroom or whether a young child can share a bedroom with a parent.

4. Owners may consider the size of the unit, the size of the bedrooms, and the number of bedrooms so long as their policy allows for family preferences (within HUD guidelines) to be considered. As owners develop and implement occupancy standards, they must take into consideration the following factors:
  - a. The number of persons in the family;
  - b. The \*age,\* sex and relationship of family members;
  - c. The family's need for a larger unit as a reasonable accommodation; and
  - d. Balancing the need to avoid overcrowding with the need to avoid underutilization of the space and unnecessary subsidy.
5. If a family, based on the number of members, would qualify for more than one unit size, the owner must allow the family to choose which unit size they prefer.
6. Counting family members. In order to determine the size of unit that would be appropriate for a particular family, the owner needs to determine the number of family members.
  - a. The owner must count all full-time members of the family.
  - b. The owner must also count all anticipated children. Anticipated children include the following:
    - (1) Children expected to be born to a pregnant woman;
    - (2) Children in the process of being adopted by an adult family member;
    - (3) Children whose custody is being obtained by an adult family member;
    - (4) Foster children who will reside in the unit;
    - (5) Children who are temporarily in a foster home who will return to the family; and
    - (6) Children in joint custody arrangements who are present in the household 50% or more of the time.
  - c. The owner may count children who are away at school and who live at home during recesses.
  - d. The owner must count live-in aides for purposes of determining appropriate unit size.



- e. The owner may establish reasonable standards for counting family members that are temporarily in a correctional facility. For example, it is reasonable for an owner to count a teenager who will return to the family in six months from a detention center. It is not reasonable to count an adult member who may return to the family in two years following incarceration.
- f. The owner must not count nonfamily members, such as adult children on active military duty, permanently institutionalized family members, or visitors.
- g. The owner must count foster adults living in the unit.

**F. Assigning a Smaller Unit Than Required**

An owner may assign a family to a smaller unit size than suggested by the owners' occupancy policies if the family requests the smaller unit and if all of the following apply:

- 1. The family is eligible for the smaller unit based upon the number of family members, and occupancy of the smaller unit will not cause serious overcrowding;
- 2. Assigning a smaller unit results in a lower rent payment for the occupant in a Section 236 or BMIR property; and
- 3. The assignment will not conflict with local codes.

**G. Assigning Units Larger Than Required**

- 1. An owner may assign a family to a larger unit than suggested by the owner's occupancy standards if one of the following conditions exists:
  - a. No eligible family in need of the larger unit is available to move into the unit within 60 days, the property has the proper size unit for the family but it is not currently available, and the family agrees in writing to move at its own expense when a proper size unit becomes available.
  - b. A family needs a larger unit as a reasonable accommodation for a family member who is a person with a disability.
- 2. However, a single person must not be permitted to occupy a unit with two or more bedrooms, except for the following persons:
  - a. A person with a disability who needs the larger unit as a reasonable accommodation.
  - b. A displaced person when no appropriately sized unit is available.

- c. An elderly person who has a verifiable need for a larger unit.
- d. A remaining family member of a resident family when no appropriately sized unit is available.

#### H. Change in Family Size After Initial Occupancy

1. After a family moves into a unit, the unit may become overcrowded or underutilized due to a change in family size.
  - a. Rental properties.
    - (1) The owner may require the family to move to a unit of appropriate size. If a unit of appropriate size is not available, the owner must not evict the family and must not increase the family's rent to the market rent. See the example below.

#### Example - Change in Family Size

Atta and Kumari Gupta live in a 3-bedroom unit at Elmwood Terrace. The Guptas have lived in the unit with their three children for 12 years. However, all of the Gupta children are grown and have moved out of the family. Atta and Kumari Gupta no longer need a 3-bedroom unit and could move into a 1-bedroom unit. Elmwood Terrace has only 2- and 3-bedroom units. If a 2-bedroom unit becomes available, the owner may require the Guptas to move into the smaller unit, but must not require them to move out of the property. If the owner asks the Guptas to move into a 2-bedroom unit, the Guptas may choose to move into it and continue to receive assistance, or remain in the 3-bedroom unit and pay market rent.

- (2) If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rent. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rent in accordance with the lease.

#### b. Subsidized housing cooperatives.

- (1) Units occupied by families who are not receiving rental assistance under a contract for assistance. In Section 236 and BMIR cooperatives in which the member is receiving no other assistance, the cooperative may establish its own policy on whether the cooperative should:
  - Offer over-housed members smaller units; and
  - Require members who refuse such offers to pay the market rate carrying charge.

- (2) Units occupied by families receiving assistance through an assistance contract. These will typically be families receiving Rent Supplement, RAP, or Section 8 assistance. When an appropriately sized unit becomes available, the cooperative must require an over-housed member to either:

- Transfer to the appropriately sized unit offered by the cooperative and continue to receive assistance; or
- Remain in the same unit and pay a higher carrying charge.

The choice remains with the member. If an appropriately sized unit is available, a cooperative may permit an over-housed member to remain in the same unit and continue to receive Section 8/Rent Supplement/RAP assistance only as long as there is no market for the size of unit the member would be vacating.

- (3) If a family refuses to move to the correct size unit, the family may stay in the current unit and pay the market rate carrying charge. The owner must not evict the tenant for refusing to move but may evict the family if it fails to pay the market rate carrying charge in accordance with the lease.

2. See Chapter 7, Section 3, for additional information about unit transfers for tenants.

**I. Change in Need for Accessible Features**

If a family is in an accessible unit but no longer needs the accessible features, the owner may request that the family move to another unit in the project. For such a request to be enforceable, this provision must be made in the lease.

### **Section 3: Verification of Eligibility Factors**

#### **3-24 Key Regulations**

This paragraph identifies the key regulatory citations pertaining to Section 3: Verification of Eligibility Factors. The citations and their titles are listed below.

- A. 24 CFR 5.659 Family Information and Verification
- B. 24 CFR 5.216 Disclosure and Verification of Social Security and Employer Identification Numbers

### 3-25 Introduction

Applicants may be assisted only after it is determined that they meet the eligibility criteria for the program and the project. This requirement is intended to ensure that an available subsidy is provided to families that are eligible under the program rules and not provided to ineligible families. Determining eligibility requires that the owner verify information that is provided by the applicant on the application form and in subsequent interviews. In general, applicants are not required to disclose their status with respect to any protected basis; however, if the family requests a reasonable accommodation based upon a disability, the family must disclose its disability status.

Chapter 5, Section 3, of this handbook provides general information and tips on verifying all types of information, including methods to avoid accepting tampered documents and detailed information on verifying income. This section addresses verification of eligibility factors, other than income, about which information must be collected in order to determine eligibility.

### 3-26 Key Requirements

- A. Owners must verify all income, expenses, assets, family characteristics, and circumstances that affect family eligibility, order of applicant selection, or level of assistance.
- B. Three methods of verification are acceptable to HUD:
  - 1. Third-party verification (written or oral);
  - 2. Review of documents provided by the applicant; or
  - 3. Self-certification.
- C. This section covers Verification of Family Composition, Verification of Family Type and Individual Status, Verification of the Need for an Assistance Animal, Verification of Income Eligibility, Collecting Proof of Social Security Numbers, and Verification of Citizenship and Immigration Status. See Chapter 5, Section 3, for other key requirements regarding verifications, and **Appendix 3** for information about verification methods.

### 3-27 Verification of Family Composition

- A. Owners may seek verification of family composition only if the owner has clear written policy. Verification is not required.
- B. Owners may use a policy to verify family composition to determine whether children reside in the household 50% or more of the time, as well as determine the appropriate unit size for the family.
- C. Owners may also want to verify the departure of family members reported to have moved out by reviewing the lease signed by the departing member for a

new residence, or a new driver's license or utility bill showing the departed member's name and a new address.

- D. If an owner determines it necessary to verify family composition, information may be collected from sources listed in **Appendix 3**.

### 3-28 Verification of Family Type and Individual Status

#### A. Overview

Eligibility for certain projects (as identified in Section 2 of this chapter), certain income deductions, and preferences are based upon whether the family is identified as elderly or disabled, or whether a family has any individual members who are elderly or disabled. Therefore, verifications of age and disability status are very important issues in determining eligibility and rent.

#### B. Disability

An owner may verify disability to determine whether a family or person meets the definition of disability used to determine eligibility for a project, preferences, or an allowance, or to identify applicant needs for features of accessible units or reasonable accommodations. The owner may not specifically ask for or verify the nature and extent of the disability. There are ways to verify disability status without obtaining detailed information or information that must not be collected. Verification of disability may be obtained through the following methods:

1. A third-party verification form may be sent by the owner to an appropriate source of information, including but not limited to the individual's physician, care worker of the elderly, social worker, psychiatrist, or the Veterans Administration.
  - a. If a third-party form is used, it must be signed by the applicant authorizing the release of such information to the owner.
  - b. The form should provide the definitions of disability used to determine eligibility and rent and should request that the source completing the form identify whether the applicant meets the definition. In this way the owner is not required to make any judgments about whether a condition is considered a disability, and will not have prohibited information.
2. Receipt of social security disability payments is adequate verification of an individual's disability status for programs listed in Figure 3-5 that use definition E for person with disabilities. Such information is obtained through verification of the social security disability payments. See the discussion in Chapter 5, Section 3.

**NOTE:** Applicants who meet the Social Security's definition of disabled are eligible even if they do not receive social security benefits. Because the Section 202 and Section 811 programs do not use this definition of

disability, this note does not apply to applicants for units in Section 202 or 811 projects.

3. Receipt of a veteran's disability benefits does not automatically qualify a person as disabled, because the Veteran's Administration and Social Security Administration define disabled differently.

#### C. Age

Owners may need to verify age for several reasons: to determine eligibility for a property restricted to elderly persons or families or to determine whether a person is old enough to sign a legally binding contract. Owners may also need to verify age to determine whether a family is entitled to certain allowances based upon the age of the head, spouse, co-head, or minor. Verification of age may be obtained using any of the documents listed in **Appendix 3**.

### 3-29 Verification of the Need for an Assistance Animal

Some applicants or residents may require the use of assistance animals as a reasonable accommodation for a disability. (See the glossary for a definition of assistance animals).

- A. An owner may verify that the applicant or resident has a disability and that there is a disability-related need for the requested accommodation, in this case the assistance animal.
- B. The owner may require the applicant or resident to provide documentation of the disability and the need for the animal from an appropriate third party, such as a medical provider, mental health provider, or other professional in a position to provide this verification. For example, if a tenant or applicant seeks a reasonable accommodation for an assistance animal that provides emotional support, that individual may be required to provide documentation from a physician, psychiatrist, social worker, or other mental health professional that the animal provides support that alleviates one or more of the identified symptoms or effects of an existing disability.
- C. The owner must implement its policy related to inquiries consistently for all applicants requesting permission to keep an assistance animal. However, a tenant or applicant should not be required to provide documentation of the disability or the disability-related need for the assistance animal if the disability is or the need is readily apparent or already known to the provider. For example, a blind tenant should not be required to provide documentation of his or her disability and the need for a guide dog.

### 3-30 Verification of Income Eligibility

Verifications of all sources of income required by HUD to be included in a family's income and used to determine applicant eligibility are described further in Chapter 5, Section 3.

### **3-31 Collecting Proof of Social Security Numbers**

- A. Applicants must disclose social security numbers (SSNs) for all family members at least 6 years of age and older, or, if no SSN has been assigned, the member must complete a certification that no SSN has been assigned.
- B. The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN is a valid SSN card issued by the Social Security Administration or one of the documents listed in **Appendix 3**.
- C. If the applicant cannot supply the original Social Security card and supplies one of the documents listed in **Appendix 3**, the applicant must also certify that the document provided is complete and accurate.

### **3-32 Verification of Citizenship and Immigration Status**

In properties subject to the restriction on assistance to noncitizens (see paragraph 3-12 F), owners may require that applicants provide verification of citizenship and must require that noncitizens provide verification of immigration status. The verification process for immigration status is dependent upon receiving information from the DHS. Because the process of verification can involve a number of steps and may result in "partial" eligibility, verification of immigration status has been covered in Section 1 of this chapter.

\*

### **3-33 Verification of Eligibility of a Student as Head or Co-head of a Household**

Owners will need to determine if students are eligible for assistance as required by Paragraph 3-16. Evidence of a separate household is determined by review and verification of previous address information. Review prior year income tax returns to verify if a parent or guardian has claimed the student as a dependent. Verify income provided by a parent, guardian or others by requiring a written certification by the individual providing this support. A certification is also required if the parent or guardian is providing no support to the student.

\*

### Chapter 3 Exhibits

- 3-1. Sample Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income
- 3-2. 12/18/98 Federal Register Notice: Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy
- 3-3. Owner's Notice No. 1
- 3-4. The Family Summary Sheet
- 3-5. Declaration Format
- 3-6. Verification Consent Format
- 3-7. Owner's Summary of Family
- 3-8. Owner's Notice No. 2 for a Tenant Family
- 3-9. Owner's Notice No. 2 for an Applicant Family
- 3-10. Owner's Notice No. 3 for a Tenant Family Final Decision on Immigration Status
- 3-11. Owner's Notice No. 3 for an Applicant Family Final Decision on Immigration Status
- 3-12. Section 8, RAP, and Rent Supplement Programs – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens
- 3-13. Section 236 Without Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens
- 3-14. Section 236 With Benefit of Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens



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**Exhibit 3-1: Sample Request for Exception to Limitations on Admission of Families with Incomes Above 50% of the Area Median Income**

TO: HUD Field Office

FROM: \_\_\_\_\_

SUBJECT: Request for Exception to Limitations on Admission of Families Whose Income Exceeds Very Low-Income Limit

Project Name \_\_\_\_\_

Contract No. \_\_\_\_\_ FHA Project No. \_\_\_\_\_

This request is for permission to lease (number) unit(s) in the subject project to families with incomes between 51% and 80% of the area median income. We believe this project meets the applicable conditions under situation \_\_\_\_\_ Chapter 3 of Handbook \* 4350.3 REV-1.\*

The following justifies the request for exception:

*(Provide the supporting documentation required by the following four pages of this Exhibit).*

For further information, you may call \_\_\_\_\_ at \_\_\_\_\_. I certify that the statements and supporting documentation in this request are true and complete. I also certify that:

- a. I have admitted all available very low-income, qualified applicants; and
- b. I will lease assisted units to families with incomes above 50% of median income only when no very low-income, qualified applicants are available.

**NOTE:** Include this certification only if you are requesting an exception for Situation 6D.

Signed by:

Owner or owner's representative

\_\_\_\_\_  
Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Title\_\_\_\_\_  
Date

*Warning: Under 18 U.S.C. 1001, whoever willingly makes or uses a document or writing he/she knows has any false or fraudulent statement or entry, in any matter under the jurisdiction of any department or agency of the United States, may be fined up to \$10,000 or imprisoned for up to five years, or both.*

**IMPORTANT:** At a minimum, requests for exceptions must include the supporting justification listed below. Situations (1) through (6) are described in paragraph 3-7 D of this handbook.

### **SITUATION 1: Displaced Tenant**

- A. State the name of the tenant for whom the exception is being requested.
- B. State approximately when the tenant would be displaced and why. Name the program under which the rehabilitation is being funded.
- C. State how long the tenant has lived in the project, the tenant's current rent, and the rent the tenant would pay after rehabilitation (without assistance).

### **SITUATION 2: Project Financed Under Section 11(b) or Section 103**

- A. Submit a copy of the portion of the bond documents or other controlling document that specifically obligates the project to lease to low-income families with incomes above 50% of the area median. Provide evidence of the date the document was signed and the period for which it is effective.
- B. Submit evidence that the bondholder or mortgagee has and will continue to enforce that policy. This could be a statement signed by the entity that established a policy.
- C. State what penalties the project will incur for failure to comply with the economic mix described in subparagraph A above.

### **SITUATION 3: Project Supervised by a State Agency**

- A. Submit a copy of the State agency's policy and any document you signed obligating the project to that policy. Provide evidence of the date the policy was first published, the date your agency signed that document, and the term of the document you signed.
- B. Submit evidence that the State agency has been and will continue to enforce its income mix policy. This evidence could be a statement signed by the Agency. The statement must clearly explain both how and how frequently the State agency has monitored and enforced its requirements.

### **SITUATION 4: Project Approved Based on Agreement to Comply with Local Government's Income Mix Requirements**

- A. Submit a copy of the letter the local government sent to the HUD Field Office during development. Be sure the letter shows the date the local government wrote the letter. Also submit a copy of any document you signed or any letter the HUD Field Office issued obligating you to comply with the local government policy.
- B. Discuss whether and how the local government has monitored and enforced its income mix policy.

**SITUATION 5: Units Designed for a Specific Occupant Group**

- A. Name the group.
- B. Submit a chart showing occupancy of assisted units by unit type (e.g., 2-bedroom, 1-bath; 2-bedroom, 2-bath) for the specific occupant group.

Contract Units Designed For This Occupant Group				
Unit Type	Total Number	Number Vacant	Number of Families on Waiting List for These Units	
			Very Low-Income	Low-Income But Not Very Low-Income

- C. Provide the information requested in subparagraphs B-3, 4, 5, and 6 under Situation 6, but consider **ONLY UNITS DESIGNED FOR THE SPECIFIC OCCUPANT GROUP**.
- D. State the average number of days these units were vacant during the last six months. Divide the total days vacant by the number of units that were vacant. (If this is a new project, use the period since the project has been occupied.)

**SITUATION 6: Insufficient Number of Very Low-Income Applicants**

- A. Submit a chart showing total occupancy and occupancy of assisted units by unit type (e.g., 2-bedroom, 1-bath; 2-bedroom, 2-bath).

Unit Type	Total Units in the Project		Contract Units		Number of Families on Waiting List	
	Total Number	Number Vacant	Total Number	Number Vacant	Very Low-Income	Low-Income But Not Very Low-Income

- B. Submit the following data:
1. Average number of days units were vacant during the last six months. Divide the total days vacant by the number of units that were vacant. (If this is a new project, use the period since the project has been occupied.)
    - a. For Section 8 units \_\_\_\_\_

- b. For PRAC units \_\_\_\_\_
    - c. For all other units \_\_\_\_\_
  2. State the vacancy factor used in development processing.
  3.
    - a. Number of assisted families admitted in last two years. (For new projects, state date of initial occupancy and period the data covers.)  
\_\_\_\_\_
    - b. Number of families in 3.a who were very low-income at admission  
\_\_\_\_\_
    - c. Line 3.b divided by line 3.a:  $3.b / 3.a$  \_\_\_\_\_
  4. Number of current tenants who are:
    - a. Low-income but not very low-income \_\_\_\_\_
    - b. Very low-income \_\_\_\_\_
    - c. Paying market rent \_\_\_\_\_
  5. Describe what you have done to attract very low-income applicants. Specify dates, methods, and whom you contacted. Marketing must include contracting the local Housing Authority to verify if there is anyone on the Housing Authority waiting list that is income/age eligible. Include copies of recent advertisements. The text of each advertisement must mention the availability of the subsidy to reduce tenant rent to 30% of income and give an example of income eligibility.
  6. Describe what more you will do to attract qualified very low-income applicants and indicate how many you expect to attract during each of the next four quarters.
- C. Submit the following only if you are requesting an exception because the very low-income population is too small to provide sustaining occupancy.
- List all market studies and surveys of which you are aware.
- Include studies you, State agencies, the Rural Housing Service, or anyone else has done. Briefly summarize those studies' conclusions as to the income levels of potential applicants in your project's market area and any nearby market area.
- D. Submit the following additional information if you are requesting an exception because a default is likely.
1. Explain why vacancy payments will not provide adequate protection while you seek very low-income applicants.

2. State the cause of any vacancy payments or cash-flow problems. State which types of units, if any, are particularly hard to rent.
3. For each of the last six months, provide the financial and vacancy information listed below. If some of this information is available on monthly accounting reports already sent to the Field Office, the Field Office may authorize you to submit only the information those reports don't cover.

### Financial and Vacancy Data Required for Exceptions Under Situation 6D

*Provide the following data for each of the last six months.*

#### Income Expenses

1. Monthly apartment rent potential for whole project
2. Apartment rents collected from HUD and tenants
3. Percent of potential collected (Line 2 / Line 1)
4. Other income earned (specify source)
5. Total income earned (Line 2 + Line 4)
6. Mortgage payment (Principal + Interest) actually required (use workout amount, if applicable)
7. Operating expenses incurred
8. Net income/loss from operations

#### Month-End Accounts

1. Number of units vacant
  - a. Section 8 units
  - b. Other units
2. Number of units not in rentable condition.
3. Accounts receivable
  - a. From tenants
  - b. HUD
  - c. Others
4. Accounts payable
  - a. From routine operations
  - b. Mortgage delinquency
  - c. Other
5. Cash on hand

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**Exhibit 3-2: 12/18/98 Federal Register Notice: Fair Housing Enforcement –  
Occupancy Standards Notice of Statement of Policy**

**Exhibit 3-3: Owners Notice No. 1**

Dear (insert name of head of household):

Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary of HUD from making financial assistance available to persons other than U.S. citizens or nationals, or certain categories of eligible noncitizens, in the following HUD programs:

- a. Section 8 Housing Assistance Payments programs;
- b. Section 236 of the National Housing Act including Rental Assistance Payment (RAP); and
- c. Section 101/Rent Supplement Program.

You have applied, or are applying for, assistance under one of these programs; therefore, you are required to declare U.S. Citizenship or submit evidence of eligible immigration status for each of your family members for whom you are seeking housing assistance. You must do the following:

1. Complete a Family Summary Sheet, using the attached blank format (identified as \* Exhibit 3-4) \* to list all family members who will reside in the assisted unit.
2. Each family member (including you) listed on the Family Summary Sheet must complete a Declaration \*(see Exhibit 3-5). \* If there are 10 people listed on the Family Summary Sheet, you should have 10 completed copies of the Declaration. The Declaration has easy-to-follow instructions and explains what, if any other forms and/or evidence must be submitted with each Declaration.
3. Submit the Family Summary Sheet, the Declarations, and any other forms and/or evidence to the name and address listed below by (insert date).

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This Section 214 review will be completed in conjunction with the verification of other aspects of eligibility for assistance. If you have any questions or difficulty in completing the attached items or determining the type of documentation required, please contact (insert name and telephone number). He/she will be happy to assist you. Also, if you are unable to provide the required documentation by the date shown above, you should immediately contact this office and request an extension, using the block provided on the Declaration Format. Failure to provide this information or establish eligible status may result in your not being considered for housing assistance.

If this Section 214 review results in a determination of ineligibility, you will have an opportunity to appeal the decision. Also, if the final determination concludes that only certain members of your family are eligible for assistance, your family may be eligible for proration of assistance. That means that when assistance is available, a reduced amount may be provided for your family based on the number of members who are eligible.

If assistance becomes available and the other aspects of your eligibility review show that you are eligible for housing assistance, that assistance may be provided to you if at least one member of your household has submitted the required documentation. Following verification of the documentation submitted by all family members, assistance may be adjusted depending on the immigration status verified. You will be contacted as soon as we have further information regarding your eligibility for assistance.

**Exhibit 3-4: The Family Summary Sheet**

<b>Member No.</b>	<b>Last Name of Family Member</b>	<b>First Name</b>	<b>Relationship to Head of Household</b>	<b>Sex</b>	<b>Date of Birth</b>
Head					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					

**Exhibit 3-5: Declaration Format**

INSTRUCTIONS: Complete this Declaration for each member of the household listed on the Family Summary Sheet

LAST NAME \_\_\_\_\_

FIRST NAME \_\_\_\_\_

RELATIONSHIP TO HEAD OF HOUSEHOLD \_\_\_\_\_ SEX \_\_\_\_\_ DATE OF BIRTH \_\_\_\_\_

SOCIAL SECURITY NO. \_\_\_\_\_ ALIEN REGISTRATION NO. \_\_\_\_\_

ADMISSION NUMBER \_\_\_\_\_ if applicable (this is an 11-digit number found on DHS Form I-94, *Departure Record*)

NATIONALITY \_\_\_\_\_ (Enter the foreign nation or country to which you owe legal allegiance. This is normally but not always the country of birth.)

SAVE VERIFICATION NO. \_\_\_\_\_  
(to be entered by owner if and when received)

INSTRUCTIONS: Complete the Declaration below by printing or by typing the person's first name, middle initial, and last name in the space provided. Then review the blocks shown below and complete either block number 1, 2, or 3:

**DECLARATION**

I, \_\_\_\_\_ hereby declare, under penalty of perjury, that I am \_\_\_\_\_  
(print or type first name, middle initial, last name):

\_\_\_\_\_ 1. A citizen or national of the United States.

Sign and date below and return to the name and address specified in the attached notification letter. If this block is checked on behalf of a child, the adult who will reside in the assisted unit and who is responsible for the child should sign and date below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Check here if adult signed for a child: \_\_\_\_\_

- \_\_\_\_\_ 2. A noncitizen with eligible immigration status as evidenced by one of the documents listed below:

**NOTE:** If you checked this block and you are 62 years of age or older, you need only submit a proof of age document together with this format, and sign below:

If you checked this block and you are less than 62 years of age, you should submit the following documents:

- a. Verification Consent Format (\* Exhibit 3-6 \*).

AND

- b. One of the following documents:

- (1) Form I-551, *Alien Registration Receipt Card* (for permanent resident aliens).
- (2) Form I-94, *Arrival-Departure Record*, with one of the following annotations:
  - (a) "Admitted as Refugee Pursuant to section 207";
  - (b) "Section 208" or "Asylum";
  - (c) "Section 243(h)" or "Deportation stayed by Attorney General"; or
  - (d) "Paroled Pursuant to Sec. 212(d)(5) of the INA."
- (3) If Form I-94, *Arrival-Departure Record*, is not annotated, it must be accompanied by one of the following documents:
  - (a) A final court decision granting asylum (but only if no appeal is taken);
  - (b) A letter from an DHS asylum officer granting asylum (if application was filed on or after October 1, 1990) or from an DHS district director granting asylum (if application was filed before October 1, 1990);
  - (c) A court decision granting withholding or deportation; or
  - (d) A letter from an DHS asylum officer granting withholding of deportation (if application was filed on or after October 1, 1990).
- (4) Form I-688, *Temporary Resident Card*, which must be annotated "Section 245A" or "Section 210."
- (5) Form I-688B, *Employment Authorization Card*, which must be annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12."
- (6) A receipt issued by the DHS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and that the applicant's entitlement to the document has been verified.

## (7) Form I-151 Alien Registration Receipt Card.

If this block is checked, sign and date below and submit the documentation required above with this declaration and a verification consent format to the name and address specified in the attached notification. If this block is checked on behalf of a child, the adult who will reside in the assisted unit and who is responsible for the child should sign and date below.

If for any reason, the documents shown in subparagraph 2.b. above are not currently available, complete the Request for Extension block below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Check here if adult signed for a child: \_\_\_\_\_

**REQUEST FOR EXTENSION**

I hereby certify that I am a noncitizen with eligible immigration status, as noted in block 2 above, but the evidence needed to support my claim is temporarily unavailable. Therefore, I am requesting additional time to obtain the necessary evidence. I further certify that diligent and prompt efforts will be undertaken to obtain this evidence.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Check if adult signed for a child: \_\_\_\_\_

\_\_\_\_\_ 3. I am not contending eligible immigration status and I understand that I am not eligible for financial assistance.

If you checked this block, no further information is required, and the person named above is not eligible for assistance. Sign and date below and forward this format to the name and address specified in the attached notification. If this block is checked on behalf of a child, the adult who is responsible for the child should sign and date below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Check here if adult signed for a child: \_\_\_\_\_

**Exhibit 3-6: Verification Consent Form**

**INSTRUCTIONS:** Complete this format for each noncitizen family member who declared eligible immigration status on the Declaration Format. If this format is being completed on behalf of a child, it must be signed by the adult responsible for the child.

**CONSENT**

I, \_\_\_\_\_ hereby consent to the following:  
(print or type first name, middle initial, last name)

1. The use of the attached evidence to verify my eligible immigration status to enable me to receive financial assistance for housing; and
2. The release of such evidence of eligible immigration status by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it to the following:
  - a. HUD, as required by HUD; and
  - b. The DHS for purposes of verification of the immigration status of the individual.

**NOTIFICATION TO FAMILY:**

Evidence of eligible immigration status shall be released only to the DHS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the DHS.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Check here if adult signed for a child: \_\_\_\_\_

**Exhibit 3-7: Owner's Summary of Family**

Member No.	Last Name of Family Member	First Name of Family Member	Relationship to Head of Household	Sex	Date of Birth	Declaration	Date Verified
Head							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							

### Exhibit 3-8: Owner's Notice No. 2 for a Tenant Family

Dear (insert name of head of household):

I regret to inform you that the primary and secondary verification reviews of immigration status performed by DHS failed to confirm eligibility for the following members of your family:

First and Last Name	Reason for termination of assistance
---------------------	--------------------------------------

Based on these reviews, your family is not eligible to continue receiving housing assistance and must begin paying market rent or vacate the unit unless you exercise one of the following options:

Option 1 – Appeal the results of secondary verification to DHS;

Option 2 – Request an informal hearing with my representative; or

Option 3 – Request a determination on your family's eligibility for (a) continued assistance, (b) prorated assistance, or (c) a temporary deferral of termination of assistance. These three types of assistance are explained in an attachment to this letter.

If you choose Option 1 and would like to appeal the results of secondary verification to the DHS, you must submit the following information to the DHS office located at (owner should insert address of local DHS office) no later than (insert date 30 days from date of this letter):

1. A copy of this letter (Notice No. 2);
2. A letter to DHS requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to you and one addressed to (owner should insert owner's name and address).

A copy of your request and proof of mailing, such as a receipt for certified or registered mail, must also be sent to (owner's name and address). If this appeal is denied by the DHS, you will still have the opportunity to proceed to Option 2 but must do so within 14 days of the date the DHS mailed its decision on the appeal (established by the postmark).

If you choose to bypass the DHS appeal process and proceed directly to option 2 and would like to schedule an informal hearing with my representative, contact (insert name and telephone number of contact) no later than (insert date 30 days from date of this letter) to schedule this meeting. If this hearing ends in a negative determination, you can proceed to Option 3.



If you proceed directly to Option 3 and bypass all other options, you should understand that you have not been determined eligible for one of these types of assistance but are requesting a determination of eligibility.

If you wish to choose Options 1, 2, or 3, please check the option of your choice on the attached option sheet and return it to (owner's name and address) no later than (insert date 30 days from date of this letter). Failure to do this will cause this office to believe that you are accepting the results of secondary verification, and you will either pay market rent or vacate the unit.

## TYPES OF ASSISTANCE AND AVAILABILITY

### Prorated assistance

What it is? The amount of assistance paid for a mixed family is reduced when not all family members have eligible status.

Availability. It is available to mixed applicant families and mixed tenant families who meet the conditions below:

1. The family is not receiving continued assistance; and
2. Termination of the family's assistance is not temporarily deferred.

### Temporary deferral of termination of assistance

What it is? Deferral of the termination of assistance a tenant family is currently receiving to permit the family additional time to make an orderly transition to other affordable housing.

Deferral period. The initial period is for six months and may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of 18 months.

Availability.

1. \*The family was in residence on June 19, 1995; \*
2. It is available to a mixed tenant family who qualifies for prorated assistance but decides not to accept prorated assistance;
3. A tenant family who has no members with eligible status and for whom the temporary deferral is necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

Conditions. Temporary deferral shall be granted to the family if one of the following conditions is met:

1. The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful;

- 
2. The vacancy rate for affordable housing of appropriate size is below 5% in the housing market area; or
  3. The Consolidated Plan, if it applies to the program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

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**OPTION SHEET**

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\_\_\_\_\_ Option 1 – DHS Appeal

I/We hereby declare our intention to appeal the results of secondary verification of immigration status to the DHS. I/We understand that we must submit the following information to the DHS office:

1. A copy of this letter (Notice No. 2);
2. A letter requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used by the owner to request Secondary Verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to me and one addressed to the owner.

\_\_\_\_\_  
(Signature, head of household)

\_\_\_\_\_  
(Date)

---

\_\_\_\_\_ Option 2 – Informal Hearing with Owner

I/We hereby request an informal hearing with a representative of the owner.

\_\_\_\_\_  
(Signature, head of household)

\_\_\_\_\_  
(Date)

---

\_\_\_\_\_ Option 3 – Request for a Determination on Other Type of Assistance

I/We understand that our family may be eligible for another type of assistance, and I/we are interested in pursuing this option, rather than Options 1 and 2. Please consider this our request for a meeting to discuss the availability of another type of assistance for our family.

\_\_\_\_\_  
(Signature, head of household)

\_\_\_\_\_  
(Date)

**Exhibit 3-9: Owner's Notice No. 2 for an Applicant Family**

Dear (insert name of head of household):

I regret to inform you that the primary and secondary verification reviews of immigration status performed by the DHS failed to confirm eligibility for financial assistance for the following members of your family:

First and Last Name	Reason for denial of assistance
---------------------	---------------------------------

**NOTE:** Also insert any other reasons they may be ineligible in accordance with Handbook 4350.3, paragraphs 3-12 and 4-31.

Based on these reviews, your family is not eligible to receive the housing assistance for which you applied. At this point, you can either accept this decision and have your application for housing assistance withdrawn from further consideration or exercise one of the following options:

Option 1 – Appeal the results of secondary verification to the DHS;

Option 2 – Request an informal hearing with my representative; or

Option 3 – Pursue your eligibility for prorated assistance.

If you choose Option 1 and would like to appeal the results of secondary verification to the DHS, you must submit the following information to the DHS office located at (owner should insert address of local DHS office) no later than (insert date 30 days from date of this letter):

1. A copy of this letter (Notice No. 2);
2. A letter to the DHS requesting the appeal;
3. Additional documentation of immigration status or a written explanation in support of the appeal;
4. A copy of the enclosed DHS Form G-845S that was used to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
5. Two stamped envelopes, one addressed to you and one addressed to (owner should insert owner's name and address).

A copy of your request and proof of mailing, such as a receipt for certified or registered mail, must also be sent to (owner's name and address). If this appeal is denied by the DHS, you will still have the opportunity to proceed to Options 2 and 3, but must do so within 14 days of the date the DHS mailed its decision on the appeal, established by the postmark.

If assistance becomes available during the appeal process, and your family is otherwise eligible to receive the assistance, it will be provided. However, the assistance may be adjusted or terminated subsequent to the conclusion of the Section 214 review and appeal process.

If assistance becomes available after a negative conclusion by the DHS on your appeal and before the conclusion of the informal hearing process (Option 2), the assistance will be delayed until a final conclusion is reached.

If you choose to bypass the DHS appeal process and proceed directly to Option 2 and would like to schedule an informal hearing with my representative, contact (insert name and telephone number of contact) no later than (insert date 30 days from date of this letter) to schedule this meeting. Of course, if this hearing ends in a negative determination, you can proceed to Option 3.

If you proceed directly to Option 3 and bypass all other options, you should understand that you have not been determined eligible for prorated assistance but are requesting a determination of eligibility. Prorated assistance means that the amount of assistance your family receives would be reduced based on the number of ineligible family members in your family. In other words, the rent you pay may be less than market rent, but would not be reduced to the level it would be if your whole family could evidence eligible immigration status.

If you wish to choose Options 1, 2, or 3, please check the option of your choice on the attached option sheet and return it to (owner's name and address) no later than (insert date 30 days from date of this letter). Failure to do this will cause this office to believe that you are accepting the results of secondary verification, and your application for housing assistance will be removed from further consideration.

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**OPTION SHEET**

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**\_\_\_\_\_ Option 1 – DHS Appeal**

I/We hereby declare our intention to appeal the results of secondary verification of immigration status to the DHS. I/We understand that we must submit the following information to the DHS office:

4. A copy of this letter (Notice No. 2);
5. A letter requesting the appeal;
6. Additional documentation of immigration status or a written explanation in support of the appeal;
7. A copy of the enclosed DHS Form G-845S that was used by the owner to request secondary verification, marked at the top center of the form in bold print "HUD APPEAL"; and
8. Two stamped envelopes, one addressed to me and one addressed to the owner.

---

(Signature, head of household)

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(Date)

---

**\_\_\_\_\_ Option 2 – Informal Hearing with Owner**

I/We hereby request an informal hearing with a representative of the owner.

---

(Signature, head of household)

---

(Date)

---

**\_\_\_\_\_ Option 3 – Request for a Determination on Proration**

I/We understand that our family may be eligible for prorated assistance, and I/we are interested in pursuing this option, rather than Options 1 and 2. Please consider this our request for a meeting to discuss the availability of proration for our family.

---

(Signature, head of household)

---

(Date)

### Exhibit 3-10: Owner's Notice No. 3 for a Tenant Family Final Decision On Immigration Status

Dear (insert name of head of household):

**[USE THE FOLLOWING FOR AN ELIGIBLE TENANT FAMILY]**

We have concluded the Section 214 review (and appeal) process and determined that your family is eligible to continue receiving the financial assistance that you currently receive.

If there are any changes to your family (either additions to or removal of any family member or changes in their immigration status), you must contact this office immediately to determine whether a further Section 214 review is necessary. As long as there are no changes to your family and you are continuously assisted, this review will not be repeated unless you move from your present unit to another project with assisted housing.

In the event that your family does move and/or change the type of housing assistance you receive, a new Section 214 review will be completed by the new project owner (or other responsible entity).

**OR**

**[USE THE FOLLOWING FOR A MIXED TENANT FAMILY]**

We have concluded the Section 214 review (and appeal) process and determined that your family meets the definition of "mixed family."

A "mixed family" means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. Mixed families can, under certain conditions, receive prorated assistance. That means that the amount of assistance paid for a mixed family is reduced based on the number of family members who have ineligible status rather than paid based on the total number of family members.

In your case, \_\_\_ out of \_\_\_ family members are ineligible; therefore, your assistance will be reduced by \_\_\_ %, unless the ineligible members move from the family or you request and receive one of the following other types of assistance:

**Prorated Assistance**

What it is? The amount of assistance paid for a mixed family is reduced based on the number of family members who have eligible status rather than paid based on the total number of family members.

Availability. It is available to mixed applicant families and mixed tenant families who meet the conditions below:

1. The family is not receiving continued assistance; and
2. Termination of the family's assistance is not temporarily deferred.

### **Temporary deferral of termination of assistance**

What it is? Deferral of the termination of assistance a tenant family is currently receiving to permit the family additional time to make an orderly transition to other affordable housing.

Deferral period. The initial period is for six months and may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of \*18 months.\*

#### Availability.

1. \*The family was in residence on June 19,1995; \*
2. It is available to a mixed tenant family who qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance;
3. A tenant family who has no members with eligible status and for whom the temporary deferral is necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing.

Conditions. Temporary deferral shall be granted to the family if one of the following conditions is met:

1. The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful;
2. The vacancy rate for affordable housing of appropriate size is below 5% in the housing market area; or
3. The Consolidated Plan, if it applies to the program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

Please contact this office immediately to discuss the type of assistance you wish to pursue. At that time, these options will be discussed with you in detail. If you fail to contact this office within 30 days from the date of this letter, your financial assistance will automatically be reduced under the proration of assistance requirements.

Also, if there are any changes to your family (either additions to or removal of any family member or changes in their immigration status), you must contact this office immediately to determine if a further Section 214 review is necessary. As long as there are no changes to your family, this review will not be repeated unless you move from your present unit to another assisted-housing situation.



In the event that your family does move and/or you change the type of housing assistance you receive, a new Section 214 review will be completed by the new project owner (or other responsible entity).

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

**OR**

**[USE THE FOLLOWING FOR AN INELIGIBLE TENANT FAMILY]**

I regret to inform you that we have concluded the Section 214 review (and appeal) process and were unable to confirm eligible immigration status for any of your family members. Therefore, your family is not eligible to continue receiving financial assistance except as noted below.

You may continue to occupy the unit by paying \$\_\_\_\_, which is the market rent for the unit, or you may choose to vacate the unit. Also, your family may be eligible for a temporary deferral of termination of assistance to permit your family additional time to make an orderly transition to other affordable housing.

These options will be discussed in detail with you if you contact this office within 30 days from the date of this letter. Failure to arrange this discussion within the 30 days will cause this office to begin termination of tenancy.

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

**Exhibit 3-11: Owner's Notice No. 3 for an Applicant Family  
Final Decision on Immigration Status**

Dear (insert name of head of household):

**[USE THE FOLLOWING FOR AN ELIGIBLE APPLICANT FAMILY]**

We have concluded the Section 214 review (and appeal) process and determined that your family is eligible to receive financial assistance.

This office will contact you as soon as assistance is available for your family.

**OR**

**[USE THE FOLLOWING FOR A MIXED APPLICANT FAMILY]**

We have concluded the Section 214 review (and appeal) process and determined that your family meets the definition of "mixed family" and is eligible to receive prorated financial assistance.

A "mixed family" means a family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. Mixed families can, under certain conditions, receive prorated assistance. That means that the amount of assistance paid for a mixed family is reduced based on the number of family members who have ineligible status rather than paid based on the total number of family members.

In your case, \_\_\_ out of \_\_\_ family members are ineligible; therefore, you would receive \_\_\_ % of the financial assistance your family would typically be entitled to if all members were eligible. In the event that the family composition changes prior to your receiving assistance, further adjustments may be made to this percentage.

When assistance becomes available for your family, this percentage will be finalized and used in calculating the rent you pay for your unit. This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

This office will contact you as soon as assistance is available for your family.

**OR**

**[USE THE FOLLOWING FOR AN INELIGIBLE APPLICANT FAMILY]**

I regret to inform you that we have concluded the Section 214 review (and appeal) process and were unable to confirm eligible immigration status for any of your family members. Therefore, your family is not eligible to receive financial assistance. The application that you filed for housing assistance will be removed from further consideration.

This decision does not preclude your family from exercising the right that may otherwise be available to seek redress directly through judicial procedures.

If the immigration status of your family changes in the future and you are able to provide evidence that would confirm eligible status, we would be happy to accept a new application for housing assistance. Any new application will be subject to a complete review, including program and income eligibility determinations.

**Exhibit 3-12: Section 8, RAP, and Rent Supplement Programs – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens**

Special Instructions for Determining  
Prorated Assistance Payment and  
Prorated Total Tenant Payment/Tenant Rent

Tenants Paying a Rent Assisted Under  
Section 8, Rental Assistance Payment (RAP), and  
Rent Supplement

**NOTE:** If this tenant receives assistance under one of the programs listed above and this is a Section 236 Project, see \* Exhibit 3-14.\*

**A. Calculate the Total Tenant Payment (TTP) and the resulting assistance payment without prorations.**

1. \_\_\_\_\_ Enter the Gross Rent. Follow the instructions in \* Field 59,\* Gross Rent, of the 50059 data requirements.
2. \_\_\_\_\_ Determine the TTP. Follow the instructions in \* Field 64,\* Total Tenant Payment, of the 50059 data requirements.
3. \_\_\_\_\_ Subtract the TTP entered in line 2 from the Gross Rent entered in line 1. Enter the difference here. (This is the Assistance Payment the family would receive if they were not subject to the proration requirements. Follow the instructions in \* Field 67,\* Assistance Payment Amount, in completing this item.)

**B. Calculate the prorated assistance payment. Enter this amount in Field B63, Assistance Payment Amount.**

4. \_\_\_\_\_ Enter the number of people in the family who are Eligible Persons, i.e., citizens or eligible noncitizens. See the Glossary for the definition of these terms.
5. \_\_\_\_\_ Enter the fraction that represents the number of Eligible Persons (numerator) and the number of persons in the family (denominator).  
**EXAMPLE:** There are five persons in the family, of which three are eligible. The fraction for this family would be 3/5.
6. \_\_\_\_\_ Multiply the amount in line 3 (the Assistance Payment the family would pay if they were not subject to the proration procedures) by the fraction determined in line 5. Enter the product here and in \* Field 67,\* Assistance Payment Amount. This is the Prorated Housing Assistance Payment for this family.

**C. Calculate the prorated TTP.**

7. \_\_\_\_\_ Enter the Gross Rent from \* Field 59 \*, Gross Rent (not Market Rent), of the 50059 data requirements.
8. \_\_\_\_\_ Subtract the amount in line 6 (Prorated Housing Assistance Payment) from the amount in line 7 (Gross Rent). This is the Prorated TTP for this family. Transfer this amount to \* Field 64 \*, Total Tenant Payment, of the 50059 data requirements.

**D. Calculate the prorated tenant rent and any utility reimbursement.**

9. \_\_\_\_\_ Enter the Utility Allowance from \* Field 58 \*, Utility Allowance Amount, of the 50059 data requirements.
10. \_\_\_\_\_ Subtract the Utility Allowance in line 9 from the Prorated TTP in line 8 and enter the amount here and in \* Field 65 \*, Tenant Rent, of the 50059 data requirements. Follow the instructions in \* Field 65 \*, Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 10 (and in \* Field 65 \*, Tenant Rent, of the 50059 data requirements), complete line 11.

11. \_\_\_\_\_ If the Utility Allowance in line 9 is greater than the Prorated TTP in line 8, enter the difference here and in \* Field 66 \*, Utility Reimbursement, of the 50059 data requirements. Otherwise leave this line and \* Field 66 \*, Utility Reimbursement, blank.

**Exhibit 3-13: Section 236 Without Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens**

Special Instructions for Determining  
Prorated Assistance Payment and  
Prorated Total Tenant Payment/Tenant Rent

Section 236 Tenants Who are Paying  
Between Basic and Market Rent  
(WITHOUT the benefit of additional assistance)

**NOTE:** If the tenant receives assistance under Section 8, Rent Supplement, or Rental Assistance Payment and this is a Section 236 project, use \*Exhibit 3-14.\*

**A. Calculate the difference between market rent and tenant rent without prorations.**

1. \_\_\_\_\_ Enter the Market Rent from \* Field 48 \*, Market Rent, of the 50059 data requirements.
2. \_\_\_\_\_ Determine the Tenant Rent in accordance with the instructions for \* Field 65 \*, Tenant Rent, of the 50059 data requirements.
3. \_\_\_\_\_ Subtract line 2 (Tenant Rent), from line 1 (Market Rent) and enter the result here. This is the difference between the Market Rent and the Tenant Rent, before considering prorations.

**B. Calculate the prorated difference between the market rent and the tenant rent.**

4. \_\_\_\_\_ Enter the number of people in the family who are Ineligible Persons; i.e. persons who do not meet the definition of a citizen or eligible noncitizen. See the Glossary for the definition of these terms.
5. \_\_\_\_\_ Enter the fraction that represents the number of Ineligible Persons (numerator) and the number of persons in the family (denominator).  
**EXAMPLE:** There are five persons in the family, of which two are ineligible. The fraction for this family would be 2/5.
6. \_\_\_\_\_ Multiply the amount in line 3, the difference between the Market Rent and the Tenant Rent before prorations, by the fraction determined in line 5. Enter this amount in Line 6. This represents the prorated difference between the Market Rent and the Tenant Rent.

**C. Calculate the prorated tenant rent.**

7. \_\_\_\_\_ Add the following amounts and enter the result in line 7: add line 2 (Tenant Rent before prorations) and line 6 (prorated difference between the Market Rent and the Tenant Rent). The result is the Prorated Tenant Rent. Enter the amount in line 7 in \* Field 65 \*, Tenant Rent.

**Exhibit 3-14: Section 236 With Benefit of Additional Assistance – Special Instructions for Determining Prorated Assistance Payment and Prorated Total Tenant Payment/Tenant Rent for Families Subject to Proration Procedures Regarding the Restriction on Assistance to Noncitizens**

Special Instructions for Determining  
Prorated Assistance Payment and  
Prorated Total Tenant Payment/Tenant Rent

Section 236 Tenants Who are Paying  
Between Basic and Market Rent  
(WITH the benefit of additional assistance)

**A. Calculate the difference between market rent and the contract rent/basic rent for the unit (without prorations).**

1. \_\_\_\_\_ Enter the Market Rent from \* Field 48 \*, Market Rent, of the 50059 data requirements.
2. \_\_\_\_\_ Enter the Contract/Basic Rent from \* Field 57 \*, Contract Rent Amount, of the 50059 data requirements.
3. \_\_\_\_\_ Subtract line 2, Contract/Basic Rent, from line 1, Market Rent, and enter the difference here.

**B. Calculate the prorated difference between the market rent and the contract/basic rent.**

4. \_\_\_\_\_ Enter the number of people in the family who are Ineligible Persons; i.e. persons who do not meet the definition of a citizen or eligible noncitizen. See the Glossary for the definition of these terms.
5. \_\_\_\_\_ Enter the fraction that represents the number of Ineligible Persons (numerator) and the number of persons in the family (denominator).  
**EXAMPLE:** There are five persons in the family, of which two are ineligible. The fraction for this family would be 2/5.
6. \_\_\_\_\_ Calculate the prorated difference between the Market Rent and the Contract/Basic Rent. Multiply line 3 difference between the Contract/Basic Rent and the Market Rent by the fraction determined in line 5. Enter the amount in line 6.

**C. Calculate the assistance adjustment for Rent Supplement, RAP, or Section 8 assistance the tenant would otherwise receive.**

7. \_\_\_\_\_ Enter the Gross Rent. Follow the instructions in \* Field 59 \*, Gross Rent (not Market Rent), of the 50059 data requirements.

8. \_\_\_\_\_ Determine the Total Tenant Payment (TTP). Follow the instructions in \*Field 64 \*, Total Tenant Payment, of the 50059 data requirements. This is the TTP the family would pay without prorations.
9. \_\_\_\_\_ Subtract the TTP entered in \* line 8 \* from the Gross Rent entered in line 7. Enter the difference here. (This is the Assistance Payment for this family if they were not subject to the proration requirements. Follow the instructions in \* Field 67 \*, Assistance Payment Amount, in completing this item.)
10. \_\_\_\_\_ Multiply the amount in line 9 (the Assistance Payment for this family if they were not subject to the proration procedures) by the fraction determined in line 5. Enter the product here. This is the Assistance Adjustment for this family.

**D. Calculate the prorated TTP.**

11. \_\_\_\_\_ Add the following amounts: line 6 + \* line 8 \* + line 10. Enter the sum in line 11. You are adding the following amounts: the prorated difference between the Market Rent, the TTP the family would pay without prorations, and the Assistance Adjustment the family would otherwise receive.

**E. Calculate the prorated assistance payment.**

12. \_\_\_\_\_ Enter the Gross Rent for this unit from \* Field 59 \*, Gross Rent (not Market Rent), of the 50059 data requirements.
13. \_\_\_\_\_ Subtract line 11 from line 12 (Gross Rent minus Prorated TTP). This is the Prorated Assistance Payment.

**F. Calculate the prorated tenant rent and any utility reimbursement.**

14. \_\_\_\_\_ Enter the Utility Allowance from \* Field 58 \*, Utility Allowance Amount, of the 50059 data requirements.
15. \_\_\_\_\_ Subtract the Utility Allowance in line 14 from the Prorated TTP in line 11, and enter the amount here and in \*Field 65 \*, Tenant Rent, of the 50059 data requirements. Follow the instructions in \* Field 65 \*, Tenant Rent. This is the Prorated Tenant Rent.

If you entered zero in line 15 (and in \* Field 65 \*, Tenant Rent, of the 50059 data requirements), complete Item 16.

16. \_\_\_\_\_ If the Utility Allowance in line 14 is greater than the Prorated TTP in line 11, enter the difference here and in \* Field 66 \*, Utility Reimbursement, of the 50059 Data Requirements. Otherwise leave this line and \* Field 66 \*, Utility Reimbursement, blank.



## CHAPTER 4. WAITING LIST AND TENANT SELECTION

### 4-1 Introduction

- A. This chapter describes requirements and makes suggestions regarding activities that occur during the marketing, application, waiting list, and tenant selection process. Owners may complete these activities before, concurrently with, or after the eligibility determination made in accordance with the requirements described in Chapter 3 of this handbook.
- B. This chapter is organized into four sections.
- **Section 1: Tenant Selection Plan** describes the required and recommended contents of the HUD tenant selection plan.
  - **Section 2: Marketing** describes marketing and outreach activities to attract tenants with particular attention to Affirmative Fair Housing Marketing Plans.
  - **Section 3: Waiting List Management** includes information related to application taking, waiting lists, and record-keeping related to tenant applications.
  - **Section 4: Selecting Tenants from the Waiting List** covers tenant selection and screening criteria. It also discusses applicant interviews, and applicable requirements and procedures when applicants are found to be ineligible, including written notification to applicants of denial of assistance.
- C. All pre-occupancy activities must be undertaken in a manner that does not discriminate on the basis of race, color, national origin, sex, religion, disability, or familial status. See Chapter 2 for general civil rights requirements. This chapter does address some particular nondiscrimination and equal opportunity requirements for pre-occupancy activities.

### 4-2 Key Terms

- A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 4-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.
- B. The terms "disability" and "persons with disabilities" are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.
1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

**NOTE:** See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

**Figure 4-1: Key Terms**

<ul style="list-style-type: none"> <li>• Applicant</li> <li>• Application</li> <li>• Denial of tenancy or assistance</li> <li>• Displaced person</li> <li>• Income-targeting</li> <li>• Market area</li> </ul>	<ul style="list-style-type: none"> <li>• Preferences</li> <li>• Preliminary application</li> <li>• Residency preference</li> <li>• Screening</li> <li>• Tenant selection plan</li> <li>• Waiting list</li> </ul>
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### **Section 1: Tenant Selection Plan**

#### **4-3 Key Regulations**

This paragraph identifies key regulatory citations pertaining to Section 1: Tenant Selection Plan. The citations and their titles (or topics) are listed below.

##### **A. Tenant Selection Plan**

1. 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit
2. 24 CFR 880.104, 881.104, 883.105, 884.118, 886.119, 886.318 (Applicability of 24 CFR, part 5, and responsibilities of the owner)
3. 24 CFR 891.410, 891.610, 891.750 (Selection and admission of tenants)

##### **B. Income-Targeting**

These regulations are applicable only to the Section 8 project-based program except where otherwise noted.

1. 24 CFR 5.653 Admission – Income-eligibility and income-targeting
2. 24 CFR 5.601, 5.603 (Occupancy Requirements for Section 8 Project-Based Assistance)

##### **C. Preferences**

1. 24 CFR 5.655, 880.602, 881.601, 883.701, 884.214, 886.132, 886.321, 891.230, 891.750 (Owner preferences/requirements in selection for a project or unit)

2. 24 CFR 236.715 Determination of Eligibility
3. 24 CFR 880.612a, 881.601, 883.701, 884.223a, 886.329a (Preference for occupancy by elderly families)

**D. Required Criminal and Drug Screening Standards**

1. 24 CFR part 5, subpart I – Preventing Crime in Federally Assisted Housing – Denying Admission and Terminating Tenancy for Criminal Activity and Alcohol Abuse
2. 24 CFR part 5, subpart J – Access to Criminal Records and Information

**E. Screening for Suitability**

- 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit

**F. Rejecting Applicants and Denial of Rental Assistance**

- 24 CFR 880.603, 881.601, 883.701, 884.214, 886.121 and 132, 886.321 and 329, 891.410, 891.610, 891.750 (Tenant selection and admission)

**G. Denial of Assistance to Noncitizens and DHS Appeal Process**

- 24 CFR part 5, subpart E – Restrictions on Assistance to Noncitizens

**4-4 Tenant Selection Plan**

**A. Key Requirements**

Owners must develop and make public written tenant selection policies and procedures that include descriptions of the eligibility requirements and income limits for admission. Figure 4-2 provides a sample outline of a tenant selection plan. The Tenant Selection Plan must include whether or not there is an elderly restriction or preference in the admission of tenants. The restriction or preference must cite the supporting documentation to ensure nondiscrimination in the selection of tenants. The contents of the plan also must be consistent with the purpose of improving housing opportunities and be reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease.

**B. HUD Review of the Tenant Selection Plan**

HUD does not approve tenant selection plans (except when owners wish to adopt local or residency preferences). However, if HUD staff become aware that a plan fails to comply with applicable requirements, the owner must modify the plan accordingly.

**Figure 4-2: Written Tenant Selection Plan - Topics****A. Required Topics**

1. Project eligibility requirements:
  - Project-specific requirements (see Chapter 3, Section 2);
  - Citizenship requirements (see Chapter 3, Section 1); and
  - Social security number requirements (see Chapter 3, Section 1).
2. Income limits (including economic mix requirements for Section 8 properties) (see Chapter 3, Section 1).
3. Procedures for accepting applications and selecting from the waiting list:
  - Procedures for accepting applications and pre-applications (see Chapter 4, Section 3);
  - Procedures for applying preferences (including income-targeting in Section 8 properties) (see Chapter 4, Sections 1 and 4);
  - Applicant screening criteria (see Chapter 4, Sections 1 and 4);
    - Required drug-related or criminal activity criteria;
    - Other allowable screening criteria; and
  - Procedures for rejecting ineligible applicants (see Chapter 4, Section 1).
4. Occupancy standards (see Chapter 3, Section 2).
5. Unit transfer policies, including selection of in-place residents versus applicants from the waiting list when vacancies occur (see Chapter 7, Section 3).
6. Policies to comply with Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act and other relevant civil rights laws and statutes (see Chapter 2, Section 3).
7. Policy for opening and closing the waiting list for the property (see Chapter 4, Section 3).

**B. Recommended Topics**

1. Applicant notification and opportunity to supplement information already provided (see Chapter 4, Sections 1 and 4).
2. Procedures for identifying applicant needs for the features of accessible units or reasonable accommodations (see Chapter 2, Section 3).
3. Updating the waiting list (see Chapter 4, Section 3).
4. Policy for notifying applicants and potential applicants of changes in the tenant selection plan (see Chapter 4, Section 1).
5. Procedures for assigning units with originally constructed design features for persons with physical disabilities (see Chapter 2, Section 3).
6. Charges for facilities and services (see Chapter 6, Section 3).
7. Security deposit requirements (see Chapter 6, Section 2).
8. Unit inspections (see Chapter 6, Section 4).
9. Annual recertification requirements (see Chapter 7, Section 1).
10. Interim recertification reporting policies (see Chapter 7, Section 2).
11. Implementation of house rule changes (see Chapter 6, Section 1).

### C. Required Contents of the Tenant Selection Plan

The tenant selection plan helps to ensure that tenants are selected for occupancy in accordance with HUD requirements and established management policies. HUD requires that the plan specify a number of procedures and policies, including the following items:

1. Project eligibility requirements.
  - a. Project specific requirements. If the property is designated for a special population, such as elderly or disabled, the owner must define population served.
  - b. Citizenship/immigration status requirements. The owner must describe how citizenship/immigration requirements are implemented, including policies regarding verification of citizenship (if any), and under what circumstances the owner will permit a temporary deferral of termination of assistance.
  - c. Social security number (SSN) requirements. Requirements for providing SSNs, allowing extended time to provide proof of SSNs and procedures used when an individual has no SSN, must be described.
2. Income limits (including economic mix for Section 8 properties). The income limit schedule used for the property must be identified (i.e., very low- or low-income. The specific maximum annual income amounts need not be included).
3. Procedures for taking applications and selecting from the waiting list.
  - a. Taking applications. The plan must include policies for taking pre-applications (if applicable) and applications.
  - b. Preferences. The plan must define each preference adopted for use in the property and any rating, ranking, or combining of the preferences the owner has established that will affect the order in which applicants are selected from the waiting list. The plan should also describe the acceptable sources of information to verify the qualification for preferences.  
  
**REMINDER:** Owners implementing state, local, or residency preferences must have prior HUD approval.
  - c. Income-targeting. For Section 8 properties only, the plan must describe the procedures used by the owner to meet the income-targeting requirements, if applicable. This description must explain how and when applicants will be "skipped over" in favor of housing an extremely low-income household and how their applications will be treated when they are skipped.

- d. Applicant screening criteria. The plan must describe the property's standards used to screen for information on drug-related or criminal activity (including registration as a sex offender), as well as the other screening activities implemented by the owner (e.g., rental history).
    - e. Procedures for rejecting ineligible applicants. The plan must describe the circumstances under which the owner may reject an applicant for occupancy or assistance. If the owner establishes a policy to consider extenuating circumstances in cases when applicants would normally be rejected but have circumstances that indicate the family might be an acceptable future tenant, such a policy must also be described in the plan.
4. Occupancy standards. Standards used by the owner to determine appropriate unit size, and procedures to place families on the lists for more than one unit size, must be included in the plan.
5. Unit transfer policies, including procedures for selecting between applicants on the waiting list and current tenants who need:
  - a. A unit transfer because of family size;
  - b. A new unit because of changes in family composition;
  - c. A deeper subsidy (Rent Supplement, RAP, or Section 8 assistance);
  - d. A unit transfer for a medical reason certified by a doctor; or
  - e. A unit transfer based on the need for an accessible unit.
6. Policies to Comply with Section 504 of the Rehabilitation Act of 1973 and The Fair Housing Act Amendments of 1988.
  - a. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance from HUD.
  - b. The Fair Housing Act prohibits discrimination in housing and housing related transactions based on race, color, religion, sex, national origin, disability and familial status. It applies to housing, regardless of the presence of federal financial assistance.
  - c. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in any program or activity receiving federal financial assistance from HUD.
7. Policy for opening and closing the waiting list. The methods of advertising used to announce opening and closing of the waiting list should be described.

**D. Additional Owner Policies and Practices**

1. General. In addition to the required content, owners are encouraged to incorporate their own policies and practices regarding the selection of tenants into the tenant selection plan. See Figure 4-2 for a list of recommended topics. By incorporating all policies and procedures in one plan, owners, applicants, and tenants will have one point of reference. Further, owners will have a single document to which they can direct applicants and tenants when questioned about policies and fairness of treatment.
2. Notification of modification to the tenant selection plan. It is also good practice for owners to include a description of the process used to provide notification to applicants on the waiting list and other interested persons (potential applicants) of the implementation of any new or revised tenant selection plan or policies that may affect an application or tenancy.

**E. Modification of the Tenant Selection Plan**

Owners should review tenant selection plans at least annually to ensure that they reflect current operating practices, program priorities, and HUD requirements.

**F. Availability of the Tenant Selection Plan**

When requested, the owner must make the tenant selection plan available to the public.

**4-5 Income-Targeting – Applicable Only to the Section 8 Project-Based Program Except Where Otherwise Noted**

**A. Key Requirements**

For each project assisted under a contract for project-based Section 8 assistance, the owner must lease not less than 40% of the dwelling units (assisted under the contract) that become available for occupancy in any project fiscal year to extremely low-income families. The methodology for income-targeting must be described in the tenant selection plan. (For information and guidance about income limit exceptions, see paragraph 3-7.)

**NOTE:** Compliance with income targeting requires owners to count both move-ins and initial \* admissions to the Section 8 project based assistance program. For example, an initial certification processed to move a tenant from Section 236 assistance to Section 8 assistance is counted for income targeting. \*

**B. Methods to Comply with Income-Targeting Requirements**

HUD does not prescribe a method for achieving compliance with the income-targeting requirement. Before determining a specific method to achieve income-targeting requirements, it is a good practice for owners to evaluate the expected admissions based upon the current waiting list.

1. First, owners should determine whether the composition of a property's current waiting list enables the owner to achieve the income-targeting requirement by simply following the standard waiting list order with no additional procedures. If the current waiting list includes a significant number of extremely low-income applicants, an owner may be able to meet the 40% target with no additional procedures.

**NOTE:** In such cases, it is important that owners periodically review the composition of admissions to confirm that the 40% target will be met for that fiscal year. If an owner's periodic review reveals that admissions of extremely low-income applicants are below the 40% requirement, the owner may need to begin using additional procedures to ensure that the requirement is met by the end of the fiscal year. The owner's Tenant Selection Plan must clearly describe what method will be used and what admission statistics will trigger implementation of the special selection method.

2. If an owner determines that following the property's waiting list in standard chronological order may not (or will not) achieve the admissions necessary to meet the income-targeting requirement, then the owner must implement procedures that will ensure compliance.
  - a. To aid in determining the tenant selection procedures that will ensure compliance, HUD recommends that owners examine the volume of unit turnover and applicant admissions for at least the past two years and, based on this information, estimate the likely number of admissions for the coming fiscal year.
  - b. Owners may choose any of the following methods, or may develop another method that is consistent with applicable civil rights requirements and does not result in disparate treatment of applicants with respect to any of the protected bases (see Chapter 2). Regardless of the method implemented by the owner, that method must be described in the Tenant Selection Plan.
    - (1) Method 1 – Admit only extremely low-income families until the 40% target is met. In chronological order, owners select eligible applicants from the waiting list whose incomes are at or below the extremely low-income limit to fill the first 40% of expected vacancies in the property. Once this target has been reached, admit applicants in waiting list order.
    - (2) Method 2 – Alternate between the first extremely low-income applicant on the waiting list and the applicant at the top of the waiting list. To implement this method, owners select the first extremely low-income applicant on the waiting list (which may mean "skipping over" some applicants with higher incomes) for the available unit, and then select the next eligible applicant currently at the top of



the waiting list (regardless of income level) for the next available unit. As subsequent units become available, tenant selection continues to alternate between the next extremely low-income applicant and the eligible applicant at the top of the waiting list until the 40% target is reached.

**NOTE:** It is possible that:

- Selection of the "next extremely low-income applicant" may result in selecting the applicant at the top of the waiting list; or
- Selection of the "eligible applicant at the top of the waiting list" may result in the selection of an extremely low-income family.

- (3) Method 3 - Alternate between the first extremely low-income applicant on the waiting list and the applicant at the top of the waiting list in groups of 10. In chronological order, owners admit the first 4 extremely low-income families from the waiting list and then admit the next 6 families from the top of the waiting list, regardless of income. This procedure results in 40% or more of admissions being extremely low-income. After filling the first 10 available units, owners again admit the first 4 extremely low-income families on the waiting list and then the next 6 families currently at the top of the waiting list.

**NOTE:** For more information about meeting income-targeting requirements, and examples of selecting applicants properly from the waiting list, see paragraph 4-25 of this chapter.

#### 4-6 Preferences

Assigning preferences to applicants who meet certain criteria is a method intended to provide housing opportunities to applicants based upon household circumstances.

##### A. Key Requirements

1. Applicants with preferences are selected from the waiting list and receive an opportunity for an available unit earlier than those who do not have a preference. Preferences affect only the order of applicants on the waiting list. They do not make anyone eligible who was not otherwise eligible, and they do not change an owner's right to adopt and enforce tenant screening criteria.
2. Owners must inform all applicants about available preferences and give all applicants an opportunity to show that they qualify for available preferences.

3. If a property receives more than one type of subsidy (e.g., insurance and assistance payments), the preference requirements of each program, if any, are applicable to the property.

**Example – Properties That Receive More Than One  
Type of Subsidy**

The owner of a 221(d)(3) BMIR property with Property Disposition Set-Aside must apply the statutory preference for displacement and has the option to apply owner-adopted preferences.

In a 236 property with a Loan Management Set-Aside contract, the owner must apply the HUD regulatory preferences and has the option to apply owner-adopted preferences.

4. Figure 4-3 below summarizes the preference requirements described in subparagraphs B through D below.

**B. Statutory, HUD, State, and Local Preferences**

Congress and HUD have established various types of preferences in an effort to provide housing to those most in need. HUD rules currently include four different kinds of preferences that apply to various programs. Owners must apply preferences to applicants based on the rules for the property subsidy type as well as any owner-adopted preferences. The following are types of preferences:

1. Statutory preferences — displacement. Owners of Section 221(d)(4), 221(d)(3), and 221(d)(3) BMIR properties must give preference to applicants who have been displaced by government action or a presidentially declared disaster.
2. HUD regulatory preferences.
  - a. HUD regulations require that owners of Section 236 properties give preference to applicants who have been displaced by government action or a presidentially declared disaster.
  - b. In Section 236 properties that also offer rental assistance through the RAP Program, owners must rank applicants according to the following criteria [24 CFR 236.715].

**NOTE:** These ranking criteria are secondary to the preferences required above.

**Figure 4-3: Summary of Preference Requirements by Property Type**

Program	Statutory Preferences - Displacement	HUD Regulatory Preferences	Owner- Adopted Preferences
Section 221(d)(3) Section 221(d)(3) BMIR Section 221(d)(4)	✓ ✓ ✓		
Section 236		✓	
Section 8			
New Construction			✓
Substantial Rehabilitation			✓
State Housing Agency			✓
New Construction or Sub Rehab			✓
Rural Housing 515/8			✓
Property Disposition Set-Aside			✓
Section 202/8			✓
Loan Management Set-Aside (LMSA)			✓

- (1) Applicants eligible for RAP assistance.
- (2) Applicants eligible to pay less than market rent under the Section 236 program.
- (3) Applicants with income sufficient to pay the market rent approved for the property. (See paragraph 3.8 for a discussion of the limitations on renting to over-income applicants. See Figure 4-4 for illustration.)

3. State and local preferences. Owners may apply preferences required by state or local law only if they are consistent with HUD and applicable civil rights requirements. For example, some states have laws that require owners to provide a preference for housing to military veterans. Owners must receive HUD approval in order to apply this locally legislated requirement. Owners must submit a written request to the HUD Field Office, describing the state or local laws requiring such preferences, requesting HUD concurrence on the preferences.

**Figure 4-4: Example of Section 236 Ranking Preferences Based on Income and Rent**

Clear River Apartments is a Section 236 property with RAP assistance. The basic rent is \$350, and the market rent is \$500.			
Date of Application	Applicant Name	Estimated rent based upon income reported on application form.	Rank order for selection based on estimated rent (assuming no other preference)
6/15/2001	Joseph Jones	\$372	3
8/1/2001	Marenka Salnikov	\$500	5
8/15/2001	Donny Yee	\$312	1
8/23/2001	Rebecca Green	\$225	2
9/12/2001	Sastri Sharma	\$360	4

**C. Owner-Adopted Preferences**

Owners are permitted to establish other preferences for assisted properties as long as they are subordinate to any program-specific preferences discussed in subparagraph B above, and comply with applicable fair housing and civil rights statutes. Some of these owner-adopted preferences require prior HUD approval (as noted below) and some do not. The types of preferences that may be implemented by owners to serve unique groups of needy applicants include:

1. **Residency preferences.** A residency preference provides applicants who live in a specific geographic area at the time of application a priority over nonresidents.
  - a. Owners must never adopt a residency requirement (meaning the owner will not lease to any applicant who does not live in the defined jurisdiction or municipality).
  - b. A residency preference may not be used for the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.
  - c. HUD must approve residency preferences prior to use by the owner. HUD will approve residency preferences only if the preference does not result in discrimination or violate equal opportunity requirements.

- d. When an owner adopts residency preferences, HUD requires that the owner consider the following as residents:
- (1) Applicants who work in the jurisdiction;
  - (2) Applicants who have been hired to work in the jurisdiction; or
  - (3) Applicants who are expected to live in the jurisdiction as a result of planned employment.

**NOTE:** "Planned employment" means bona fide offer to work in a municipality.

- e. The owner **may** treat graduates of, or active participants in, education and training programs located in a residency preference area as residents of the area if the education or training program is designed to prepare individuals for the job market.
- f. For Section 8 properties, an owner's residency preference must be approved by HUD through a modification to the Affirmative Fair Housing Marketing Plan, in accordance with 24 CFR 108.25.
- g. Owners may not base a residency preference on the length of time an applicant has lived or worked in the area.
- h. If there are no eligible residents on the waiting list, owners cannot hold units open because of a residency preference. In this situation, owners must admit the next household on the waiting list.
2. Working families. Owners may adopt a preference in selecting families from the waiting list for those families in which the head of household or spouse is employed. Even if the owner adopts such a preference, however, discrimination against persons unable to work is prohibited. Owners must not deny the preference to households in which the head or spouse is 62 or older, or to a person with disabilities.
3. Disability. Owners may adopt a preference to select families that include a person with a disability. Owners may not create preferences for persons with a specific type of disability unless allowed in the controlling documents for the property. (See Chapter 3, Section 2.) Owners may not apply a preference for persons without disabilities.
4. Victims of Domestic Violence. Owners may adopt a preference for admission of families that include victims of domestic violence.
5. Specific groups of single persons. Owners may adopt a preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.

**D. Determining the Relative Weight of Owner-Adopted Preferences**

Owners may decide to assign various importance to owner-adopted preferences. If the owner chooses to do so, a ranking, rating, or combination of preference circumstances must be identified in the Tenant Selection Plan and consistently used. For example, an owner may choose to provide the highest ranking to working families, though this ranking is subordinate to income targeting requirements and to statutory and regulatory preferences described in paragraphs 4-6 A and B above. Alternatively, an owner might choose to adopt a policy that provides top priority to an applicant who qualifies for the most preference categories (also known as combining preferences).

**4-7 Screening for Suitability**

Screening is used to help ensure that families admitted to a property will abide by the terms of the lease, pay rent on time, take care of the property and unit, and allow all residents to peacefully enjoy their homes. Information collected through the screening process enables owners to make informed and objective decisions to admit applicants who are most likely to comply with the terms of the lease. An effective screening policy will also ensure fair, consistent, and equal treatment of applicants. All screening criteria adopted by the owner must be described in the tenant selection plan and consistently applied to all applicants in a non-discriminatory fashion and in accordance with all applicable fair housing and civil rights laws.

**A. Screening Versus Determining Eligibility**

*Screening* for suitability of tenancy is not a determination of *eligibility* for the program.

1. Eligibility is a determination that an applicant family meets all of the criteria for the type of subsidy in the property. To be eligible a family must meet the income limits and provide specific information and documentation of other family information (i.e., SSNs, and citizenship information). Eligibility is discussed in detail in Chapter 3.
2. Screening is a determination that an otherwise eligible household has the ability to pay rent on time and to meet the requirements of the lease.

**B. Key Requirements**

1. Owners are permitted to establish and apply written screening criteria to determine whether applicants will be suitable tenants. If an owner's review of information about the applicant indicates that the applicant will not be a suitable tenant, the owner may reject the application for assistance or tenancy.

2. Owners must establish written screening criteria to prohibit the admission of certain individuals who have engaged in drug-related criminal behavior, or are subject to a state lifetime sex offender registration program, or are individuals whose abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. Owners may choose to expand these requirements regarding prohibition of admission to certain applicants [24 CFR part 5, subpart I & JJ].
3. Screening criteria must be included in the tenant selection plan. (See paragraph 4-4 C and Figure 4-2.)
4. Owners must apply screening criteria uniformly to all applicants to prevent discrimination and avoid fair housing violations.
5. The screening of live-in aides at initial occupancy, and the screening of persons or live-in aides to be added to the tenant household after initial occupancy involve similar screening activities. Both live-in aides and new additions to the tenant household must be screened for drug abuse and other criminal activity. In addition, owners may apply any other owner established applicant screening criteria to new household members in order to establish suitability for tenancy. Owner established screening criteria may also be applied to live-in aides, except for the criterion regarding the ability to pay rent on time because live-in aides are not responsible for rental payments.
6. \* Police officers and other security or management personnel that reside in subsidized units are subject to the same screening criteria as other applicants. \*
7. The costs of screening must not be charged to applicants. Such costs may be charged against the project operating account. A variation on this rule applies to cooperatives.
8. Certain types of screening are prohibited. See paragraph 4-8 below.

**C. Screening For Drug Abuse And Other Criminal Activity**

1. Tenant selection plans must contain screening criteria that include standards prohibiting admission of those who have engaged in drug-related or criminal activity. The plan may, under certain circumstances, include additional provisions that deny admission to applicants for other drug and criminal activity.
2. Owners must establish standards that prohibit admission of:
  - a. Any household containing a member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity. The owner may, but is not required to, consider two exceptions to this provision:

- (1) The evicted household member has successfully completed an approved, supervised drug rehabilitation program; or
    - (2) The circumstances leading to the eviction no longer exist (e.g., the household member no longer resides with the applicant household).
  - b. A household in which any member is currently engaged in illegal use of drugs or for which the owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents;
  - c. Any household member who is subject to a state sex offender lifetime registration requirement; and
  - d. Any household member if there is reasonable cause to believe that member's behavior, from abuse or pattern of abuse of alcohol, may interfere with the health, safety, and right to peaceful enjoyment by other residents. The screening standards must be based on behavior, not the condition of alcoholism or alcohol abuse.
3. Owners may establish additional standards that prohibit admission if the owner determines that any household member is currently engaging in, or has engaged in, the following activities during a reasonable time before the admission decision:
- a. Drug-related criminal activity. The owner may include additional standards beyond the required standards that prohibit admission in the case of eviction from federally assisted housing for drug-related criminal activity and current drug use.
  - b. Violent criminal activity.
  - c. Other criminal activity that threatens the health, safety, and right to peaceful enjoyment of the property by other residents or the health and safety of the owner, employees, contractors, subcontractors, or agents of the owner.

**NOTE:.\*** If an owner's admission policy includes any of the activities above or similar restrictions that uses a standard regarding a household member's current or recent actions, the owner may define the length of time prior to the admission decision during which the applicant must not have engaged in the criminal activity. The owner shall ensure that the relevant "reasonable" time period is uniformly applied to all applicants in a non-discriminatory manner and in accordance with applicable fair housing and civil rights laws.\*



4. An owner's screening criteria also may include the following provisions:
- a. Exclusion of culpable household members. An owner may require an applicant to exclude a household member when that member's past or current actions would prevent the household from being eligible.
  - b. Drug or alcohol rehabilitation. When screening applications, an owner may consider whether the appropriate household member has completed a supervised drug or alcohol rehabilitation program. The owner may require appropriate documentation of the successful completion of a rehabilitation program.
  - c. Length of mandatory prohibition. The owner may set a period longer than required by the regulation (as described in subparagraph C.2 above) that prohibits admission to a property for disqualifying behavior. For those behaviors that would result in denial for a "reasonable time," the owner must define a reasonable period in the tenant selection plan.
  - d. Reconsideration of previously denied applicants. An owner may reconsider the application of a previously denied applicant if the owner has sufficient evidence that the members of the household are not and have not engaged in criminal activity for a reasonable period of time. The owner must define a reasonable period of time in the tenant selection plan. \* When the owner chooses to adopt this admission provision, the owner must require the household member to submit documentation to support the reconsideration of the decision which includes:
    - (1) A certification that states that she or he is not currently engaged in such criminal activity and has not engaged in such criminal activity during the specified period.
    - (2) Supporting information from such sources as a probation officer, a landlord, neighbors, social service agency worker or criminal record(s) that were verified by the owner.\*
  - e. Consideration of the circumstances relevant to a particular case. In developing optional screening criteria for a property, and applying the criteria to specific cases, owners may consider all the circumstances relevant to a particular household's case. Such considerations may not be applied to the required screening criteria described in subparagraph C.2 above. These types of circumstances include:
    - (1) The seriousness of the offense;
    - (2) The effect denying tenancy would have on the community or on the failure of the responsible entity to take action;

- (3) The degree of participation in the offending activity by the household member;
- (4) The effect denying tenancy would have on nonoffending household members;
- (5) The demand for assisted housing by persons who will adhere to lease responsibilities;
- (6) The extent to which the applicant household has taken responsibility and takes all reasonable steps to prevent or mitigate the offending action; and
- (7) The effect of the offending action on the program's integrity.

#### D. Considerations In Developing Screening Criteria

Specific screening criteria will vary from property to property. In developing screening criteria, owners may want to consider the following factors:

1. Length of the property's waiting list. An owner of a property that has a long waiting list may consider establishing relatively restrictive screening standards, whereas an owner of a property with little or no waiting list may want to have less restrictive standards. Setting standards involves balancing the need to fill vacancies with the long-term effect of accepting higher risk tenants. Thorough screening often makes the project more attractive to applicants, thereby decreasing vacancies and turnover.
2. Application and screening fees. Screening takes staff time and may require funds to pay for credit reports and other information.
  - a. Rental housing. Owners may not charge application fees or require applicants to reimburse them for the cost of screening, including screening for criminal history. Therefore, owners will want to carefully weigh the cost of various screening activities against the benefits. Screening costs may be charged as an operating expense against the property operating account.
  - b. Screening criteria for assisted units in cooperatives.
    - (1) Application fees. Cooperatives may require prospective members to pay application fees if such fees are permissible under state and local laws. The cooperative's board of directors must approve the application fee. While the fee must be reasonable in amount and consistently applied, cooperatives need not submit the fee for Field Office approval. The cooperative must treat the application fee as an earnest money deposit. The application fee is not intended to cover the administrative expenses the cooperative incurs in processing applications. If the

applicant is accepted for membership, the cooperative must apply the application fee to the purchase of the membership. If the applicant is rejected by the cooperative, the cooperative must refund the full application fee. The cooperative may retain the application fee only if the applicant backs out of the purchase transaction. While rental projects may not collect application fees, cooperatives may do so because application fees are traditional for homeownership transactions, and admission to a cooperative requires completion of more complicated paperwork than does admission to a rental. Collection of an earnest money deposit will minimize instances in which the cooperative spends time and money processing the application and then the applicant backs out.

- (2) Credit report fees. Cooperatives may charge applicants for the cost of credit reports. This fee is intended to cover the cooperative's out-of-pocket cost; these fees are not refundable and need not be applied to the applicant's purchase costs. Cooperatives are permitted to charge these costs to applicants because:

- Such charges are standard industry practice for homeownership;
- Costs of these reports for home purchase can be more expensive than those required for rental purposes; and
- During initial occupancy, HUD requires cooperatives to obtain credit reports on all applicants, and many cooperatives have continued that policy as memberships are resold in later years.

#### **E. Permitted Screening Criteria Commonly Used by Owners**

1. Overview. Owners are permitted to screen applicants for suitability to help them to determine whether to accept or deny an applicant's tenancy. Owners should consider at least developing screening criteria related to the following factors and may establish other criteria not specifically prohibited in paragraph 4-8 below. All screening criteria adopted by the owner must be described in the tenant selection plan and consistently applied to all applicants.
2. Screening for credit history. Examining an applicant's credit history is one of the most common screening activities. The purpose of reviewing an applicant's credit history is to determine how well applicants meet their financial obligations. A credit check can help demonstrate whether an applicant has the ability to pay rent on time.

- a. Owners may reject an applicant for a poor credit history, but a lack of credit history is not sufficient grounds to reject an applicant.
  - b. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between an acceptable and unacceptable credit rating. Owners are most often interested in an applicant's credit history related to rent and utility payments. A requirement for applicants to have a perfect credit rating is generally too strict a standard.
  - c. Owners may determine how far back to consider an applicant's credit history. Owners generally focus on credit activity for the past three to five years. It is a good management practice to give priority to current activity over older activity.
  - d. Owners may have to justify the basis for a determination to deny tenancy because of the applicant's credit rating, so there should be a sound basis for the rejection.
3. Minimum Income Requirement. Section 236 and Section 221(d)(3) BMIR applicants who receive no other form of assistance, such as Section 8, may be screened for the ability to pay the Section 236 basic rent or the BMIR rent. Owners may establish a reasonable minimum income requirement to assess the applicant's ability to pay the rent. In the Section 8, RAP, and Rent Supplement programs, owners may **not** establish a minimum income requirement for applicants. (See paragraph 4-8 A.)
4. Screening for rental history. In addition to determining whether applicants are likely to meet their financial obligations as tenants and pay rent on time, owners are also interested in whether applicants have the ability to meet the requirements of tenancy.
  - a. Owners must not reject an applicant for lack of a rental history but may reject an applicant for a poor rental history.
  - b. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between acceptable and unacceptable rental history.
5. Screening for housekeeping habits. Owners may visit the applicant's current dwelling to assess housekeeping habits.
  - a. As part of their written screening criteria, and in order to ensure that all applicants are treated fairly, owners should describe the general criteria they will use for distinguishing between acceptable and unacceptable housekeeping practices.

- b. Owners must establish reasonable standards which can be consistently applied to all families. Messy living quarters are not the same as safety and health hazards.
  - c. In defining the home visit standards, the owner should establish a geographic radius within which home visits are made, and outside of which home visits are not made. It is impractical to establish a policy requiring home visits for all applicants, which might require the owner to visit units many miles from the property. For example, an owner may determine that 50 miles is the maximum distance that can be traveled to visit an applicant at home.
6. Consideration of extenuating circumstances in the screening process.  
Owners may consider extenuating circumstances in evaluating information obtained during the screening process to assist in determining the acceptability of an applicant for tenancy.

#### **4-8 Prohibited Screening Criteria**

Owners are prohibited from establishing any of the following types of screening criteria.

##### **A. Criteria That Could Be Discriminatory**

Owners must comply with all applicable federal, state or local fair housing and civil rights laws and with all applicable civil rights related program requirements.

1. Owners may not discriminate based on race, color, religion, sex, national origin, age, familial status, or disability.
2. Owners may not discriminate against segments of the population (e.g., welfare recipients, single parent households) or against individuals who are not members of the sponsoring organization of the property. Owners may not require a specific minimum income, except as allowed by paragraph 4-7 E.3 of this Handbook.
3. These prohibitions apply to (1) accepting and processing applications; (2) selecting tenants from among eligible applicants on the waiting list; (3) assigning units; (4) certifying and recertifying eligibility for assistance; and (5) all other aspects of continued occupancy.
4. Complaints alleging violations of these prohibitions must be referred to HUD's Regional Offices of Fair Housing and Equal Opportunity.

##### **B. Criteria That Require Medical Evaluation or Treatment**

1. Owners may not require applicants to undergo a physical exam or medical testing such as AIDS or TB testing as a condition of admission.

2. Owners may not require pregnant women to undergo medical testing to determine whether she is pregnant in order to assign a unit with the appropriate number of bedrooms.
3. Owners may uniformly require all applicants to provide evidence of an ability to meet the obligations of tenancy, but owners may not impose greater burdens on persons with disabilities. Persons with disabilities may meet the requirements of the lease with the assistance of others, including an assistance animal, a live-in aide, or with services provided by someone who does not live in the unit.

**C. Criteria That Require Meals and Other Services**

Owners may not require tenants to participate in a meals program that is not approved by HUD. **NOTE:** 24 CFR, part 278, prohibits HUD from approving new mandatory meals programs after April 1, 1987.

**D. Criteria That Require Donation or Contribution**

Owners must not require a donation, contribution, membership fee, application fee, or processing fee as a condition of admission. Cooperative housing projects may charge a membership fee. Owners may not require any payments that are not described in the lease.

**E. Criteria That Inquire about Disabled Status**

It is unlawful for an owner to make an inquiry to determine whether an applicant, or any person associated with the applicant, has a disability or to make an inquiry about the nature or severity of a disability. However, in accordance with paragraph 4-29, owner may request supporting documentation in order to verify whether an individual is a qualified individual with a disability when an applicant requests an accessible unit or a reasonable accommodation/modification and must adhere to the guidelines as set forth in 2-31(F). (Refer to Chapter 2 for more information on fair housing requirements.)

**F. Criteria Prohibited by State and Local laws**

Owners must adhere to state and local laws that prohibit certain screening criteria.

#### **4-9 Rejecting Applicants and Denial of Rental Assistance**

**A. Key Requirements**

1. Prohibition of discrimination in the denial of tenancy or rental assistance. Owners must not discriminate against an applicant based on race, color, religion, sex, national origin, familial status, or disability. (See Chapter 2 for additional information.)

2. Prompt notification. Owners must promptly notify the applicant in writing of the denial of admission or assistance.

**B. Conditions under Which Owners May Reject Applicants**

An owner may reject an applicant if the applicant:

1. Is ineligible for occupancy in a particular unit or property (see Chapter 3, Sections 1 and 2 for eligibility requirements);
2. Is unable to disclose and document SSNs of all household members who are at least 6 years old, or does not execute a certification stating that no SSNs have been assigned;
3. Does not sign and submit verification consent forms or the Authorization for Release of Information (forms HUD-9887 and HUD-9887-A);
4. Has household characteristics that are not appropriate for the specific type of unit available at the time, or has a family of a size not appropriate for the unit sizes that are available;

**NOTE:** In such cases, the owner may deny the applicant admission to a specific unit, but the applicant may continue to wait for another unit. See the example below.

**Example – Denial of Unit**

An owner could deny an applicant family a particular unit and place the family on the waiting list if the only available unit is an accessible unit and the following is true: (a) the applicant household does not include an individual requiring the features of the unit, and (b) there are either tenants in the property or applicants on the waiting list who desire such a unit and who have a member of the household requiring the features of the unit.

**NOTE:** In some programs, eligibility is dependent on the head or spouse meeting particular eligibility criteria.

5. Includes family members who did not declare citizenship or noncitizenship status, or sign a statement electing not to contend noncitizen status (see paragraph 4-31). However, an owner should permit families to revise their application to exclude proposed family members who do not declare citizenship or eligible noncitizen status; or
6. Does not meet the owner's tenant screening criteria.

**C. Notification of Applicant Rejection**

1. Rejection notices must be in writing.
2. The written rejection notice must include:
  - a. The specifically stated reason(s) for the rejection; and
  - b. The applicant's right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection.

**D. Owner Meetings with Applicants to Discuss Rejection Notices**

1. Any meeting with the applicant to discuss the applicant's rejection must be conducted by a member of the owner's staff who was not involved in the initial decision to deny admission or assistance.
2. Within 5 business days of the owner response or meeting, the owner must advise the applicant in writing of the final decision on eligibility.



## **Section 2: Marketing**

### **4-10 Key Regulations**

This paragraph identifies key regulatory citations pertaining to Section 2: Marketing. The citations and their titles (or topics) are listed below.

#### **Affirmative Fair Housing Marketing and Fair Housing Poster**

1. 24 CFR 108.40 (Affirmative fair housing marketing compliance reviews)
2. 24 CFR, part 110 – Fair Housing Poster
3. 24 CFR part 200, subpart M – Affirmative Fair Housing Marketing Regulations
4. 24 CFR 880.601, 881.601, 883.701 (Responsibilities of owner/borrower)
5. 24 CFR 884.214, 886.121, 886.321 (Marketing)
6. 24 CFR 891.400, 891.600 (Responsibilities of the owner/borrower)

### **4-11 Summary of Key Requirements**

#### **A. Affirmative Fair Housing Marketing Requirements**

Each multifamily property built or substantially rehabilitated since July 1972 must develop and carry out an Affirmative Fair Housing Marketing Plan (Form HUD-935.2). Projects built or rehabilitated before July 1972 are not required to have a plan in the prescribed form, \* unless the plan is required by a housing assistance contract. However, Owners\* must affirmatively market their units to those least likely to apply.

#### **B. Fair Housing Poster**

Owners of HUD-subsidized multifamily housing must display the Equal Housing Opportunity poster (i.e., Fair Housing Poster) in accordance with HUD requirements.

### **4-12 Affirmative Fair Housing Marketing and Fair Housing Poster**

This paragraph describes affirmative fair housing marketing activities and implementation of the Affirmative Fair Housing Marketing Plan (form HUD-935.2) approved for the property. It also discusses compliance and requirements for updating the Affirmative Fair Housing Marketing Plan.

**A. Key Requirements**

1. The marketing effort should attract a broad cross-section of the eligible population without regard to race, color, religion, sex, disability, familial status, or national origin.
2. Whenever additional applicants are needed to fill available units, advertising must be carried out in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, or, in cases where no AFHMP is required, marketing must be conducted in an affirmative manner.
3. During compliance reviews, owners must be able to provide information documenting their compliance with affirmative fair housing marketing requirements and their approved plan.

**B. Affirmative Fair Housing Marketing Plan**

Owners must comply with the requirements of their HUD-approved Affirmative Fair Housing Marketing Plan, which is designed to promote equal housing choice for all prospective tenants regardless of race, color, religion, sex, disability, familial status, or national origin.

1. The purpose of the plan is to ensure that eligible families of similar income levels will have a similar range of housing opportunities.
2. The plan outlines marketing strategies the owner must use, including special efforts to attract persons who are least likely to apply because of such factors as the racial and ethnic composition of the neighborhood in which the property is located. Marketing should also seek to reach potential applicants outside the immediate neighborhood if marketing only within the neighborhood would create a disparate impact against certain classes (e.g., if the entire neighborhood includes no minorities).
3. Owners must monitor the results of the marketing effort and adjust their marketing techniques as necessary.
4. Owners may not require local residency as a prerequisite for admission. However, with HUD approval, owners may give preference to residents of the municipality in which the property is located. HUD will approve the use of local residency preferences only if such preferences are found to be consistent with nondiscrimination and equal opportunity requirements and the goals of the Affirmative Fair Housing Marketing Plan. See paragraph 4-6 C.1 for more information about residency preferences.
5. HUD does not require subsidized multifamily projects built prior to February 1972 to have an Affirmative Fair Housing Marketing Plan, unless the property has been substantially rehabilitated subsequent to February 1972 \* or the plan is required by a housing assistance contract.\* However, owners of such properties are required to affirmatively market their units to those least likely to apply.

**C. Special Marketing Requirements**

1. All Section 8 units. Owners must target their marketing and outreach activities to attract applicants with incomes below the very low-income limit. Owners must also target their marketing and outreach activities to attract applicants with incomes at or below the extremely low-income limit to achieve the income targeting requirements (see paragraph 4-5).
2. New construction and substantial rehabilitation units NOT designed for disabled or elderly persons (except previously HUD-owned properties). Before marketing to other prospective tenants, owners must market to nonelderly families, including those with disabilities, who are:
  - a. Least likely to apply as identified in the Affirmative Fair Housing Marketing Plan; and
  - b. Expected to reside in the community because of their current or planned employment.
3. Section 202 and Section 811 PRAC properties - Supportive Housing for the Elderly and Supportive Housing for Persons with Disabilities.
  - a. Owners must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit or occupancy of the group home. Marketing activities must include the provision of notices on the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.
  - b. At the time of PRAC execution, the owner must submit to HUD a list of leased and unleased assisted units (or, in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces in order to qualify for vacancy payments for these units or spaces.

**D. Advertising**

When a property is initially leased, \* or when \* available units cannot be filled from \* applicants on a \* waiting list, or no waiting list exists; the owner must advertise to attract eligible applicants in the market area who are least likely to apply. Advertising must be directed to all potential applicants regardless of race, color, religion, sex, disability, familial status, or national origin.

1. An affirmative marketing program must be in effect for each multifamily project throughout the life of the mortgage. Such a program typically involves publicizing the availability of housing opportunities to all persons, regardless of race, color, religion, sex, disability, familial status, or national origin, in the media most likely to be used by the applicants, including minority publications or other minority outlets that are available in the housing market area.

2. Owners must target advertising to groups other than the typical population of the neighborhood in which the property is located, reaching out to applicants who are least likely to apply because they are not the predominant racial or ethnic group in the neighborhood.
3. All advertising must include either the HUD-approved Equal Housing Opportunity logo, slogan, or statement. All advertising depicting persons should depict members of all eligible protected classes including individuals from both majority and minority groups.

**E. Records**

During compliance reviews, owners must be able to provide documentation that marketing activities for the property have been consistent with affirmative fair housing marketing requirements and the approved plan for the property. Useful records for this purpose include copies of media and marketing materials, records of marketing activities conducted, and documentation of any special marketing activities conducted in accordance with the property's plan.

**F. Updating the Marketing Plan**

1. The approved Affirmative Fair Housing Marketing Plan must be followed. It is the owner's blueprint for marketing activity.
2. Owners must review their Affirmative Fair Housing Marketing Plan every five years and update as needed to ensure compliance with 24 CFR 200.620. The plan must be revised whenever a substantial change takes place or the local Consolidated Plan is updated. The revised plan must be submitted to HUD for approval. When HUD or another contract administrator conducts an on-site review, it will monitor that affirmative marketing is actually being performed in accordance with the Affirmative Fair Housing Marketing Plan.
3. A five-year review may indicate that revisions to the Affirmative Fair Housing Marketing Plan are necessary if the population of the property area has changed over time, and thus targeted marketing efforts should change. The owner should review the demographics of the project area and determine whether advertising efforts should be targeted to different groups. For example, in a neighborhood in which the population has changed, it may be more appropriate to switch to advertising in Vietnamese rather than Spanish media sources.
4. When reviewing and updating the plan, the owner should also determine whether the advertising sources still exist and whether advertising sources used in the past should be changed or expanded.

**G. Fair Housing Poster**

1. Owners must post and maintain the required Equal Housing Opportunity poster.
  - a. Owners may obtain copies of the poster from their HUD Field Office.
  - b. Owners may use a facsimile of the poster if the facsimile and lettering are equivalent in size and legibility to the poster available from HUD.
2. The Fair Housing Poster must be prominently displayed so it is readily apparent to all persons seeking housing.

**Section 3: Waiting List Management**

**4-13 Key Regulations**

This paragraph identifies key regulatory citations pertaining to Section 3: Waiting List Management. The citations and their titles (or topics) are listed below.

**A. Taking Applications for Occupancy**

1. 24 CFR 5.659 Family Information and Verification
2. 24 CFR 880.603, 881.601, 883.701, 884.214, 886.121, 886.321, 891.410, 891.610, 891.750 (Selection and admission of tenants)

**B. Creating and Maintaining Waiting Lists**

1. 24 CFR 5.655 Owner Preferences in Selection for a Project or Unit
2. 24 CFR 880.603, 881.601, 883.701, 884.214, 886.121 and 132, 886.321 and 329, 891.410, 891.610, 891.750 (Tenant selection and admission)

**C. Record-Keeping**

1. 24 CFR 880.603, 881.601, 883.701, 884.214, 886.321, 886.329, 891.410, 891.610, 891.750 (Selection and admission of tenants)
2. 24 CFR, part 1 – Nondiscrimination in Federally Assisted Programs.

## 4-14 Taking Applications for Occupancy

### A. Key Requirements

1. Application. Anyone who wishes to be admitted to an assisted property or placed on a property's waiting list must complete an application.
2. Applicant certification. The application must include a signature from the applicant certifying the accuracy and completeness of information provided. See the discussion in Chapter 5, Section 3 for information about the Privacy Act and disclosure requirements.
3. \* The applicant provides self-certification of their race and ethnicity for data collection by using form HUD-27601-H (Exhibit 4-3). Completing this form is optional and there is no penalty for not completing it. Owners should not complete the form on behalf of the tenant. When the tenant chooses not to self certify race or ethnicity, a notation of this should be placed in the tenant file. \*

### B. Contents of Application

Although HUD does not prescribe an application format, a written application form used to initiate verification of eligibility factors should include the following data:

1. Household characteristics – name, sex, age, disability status (only where necessary to establish eligibility) of each household member, need for an accessible unit, and race/ethnicity of head of household;
2. General household contact information – address, phone number;
3. Identification of the approved preferences, if HUD approval is required, for which the household qualifies (only if preferences are used at the property);
4. Source(s) and estimate(s) of household's anticipated annual income and assets;
5. Citizenship declaration and consent forms. (This is not required for 221(d)(3) \* BMIR \* (without Section 8 or any other assistance), 202 (without Section 8), 202 PAC, 202 PRAC, and 811 PRAC properties that have no other subsidy);
6. Marketing information to understand how the applicant heard about the property; and
7. Screening information – prior landlords, credit, and drug and criminal history consistent with the property's tenant selection policies.

### **C. Types of Applications**

Owners may choose to use a "full" application form, requiring all the detailed information needed to make a determination of eligibility, or a shorter pre-application form.

1. If an applicant will be placed on a waiting list, as opposed to being immediately offered a unit, the owner may use a pre-application (brief form of application), which provides the minimum information needed to determine if the applicant should be put on the waiting list.
2. If only a preliminary application has been completed, a full application should be completed at the time a unit is available so that the owner has enough information to determine the applicant's eligibility completely.

## **4-15 Matching Applicants on the Waiting List to Available Units**

### **A. Overview**

Once unit size and preference order is determined, owners must select applicants from the waiting list in chronological order to fill vacancies. The owner then determines eligibility (if that has not already been done), performs tenant screening (see Section 4 of this chapter), and decides whether the applicant can be housed based on income-targeting requirements.

### **B. Nondiscrimination When Matching Applicants to Available Units**

Although an owner may establish preferences to admit households with specific characteristics from the waiting list, the owner must never base applicant selection or denial of assistance upon:

1. Membership in a socio-economic class (e.g., welfare recipients, single parent households) or lack of membership in the sponsoring organization;
2. Familial status;
3. Race, color, religion, sex, or national origin of household members;
4. Whether the household has a member with a specific disability (unless restricted by program statute);
5. Family size (However, if the family size requires a unit size that does not exist in the property, the family must be denied assistance. See paragraph 4-9.); and
6. Age (unless restricted by program statute).

**C. Matching Family Characteristics with Available Units**

In selecting a family to occupy a particular unit, the owner may match certain family characteristics with the type of unit available.

1. Matching families to units according to family size and number of bedrooms is not only acceptable but also necessary to comply with occupancy standards and local codes.
2. Owners must first offer units with special accessibility features to families that include persons with disabilities requiring such features.

**D. Section 8 Units: Extremely Low-Income Targeting Requirements and Tenant Selection**

1. When an extremely low-income applicant is needed to achieve targeting requirements, and the next applicant on the waiting list has income above the extremely low-income limit, that applicant must be returned to the waiting list. When the owner is ready to house an applicant with income above the extremely low-income limit, this applicant can be served.
2. A notation must be made on the waiting list indicating why this applicant has been returned to the list rather than housed or withdrawn. The owner will then look for the first extremely low-income applicant on the list needing the appropriate bedroom size and qualifying for the top-ranked preference, if preferences are used by the project.

**E. Restrictions on Applicant Selection Based on Income**

Owners may not select families for unit/property occupancy in an order inconsistent with the waiting list in order to house relatively higher-income families. However, an owner may select a family for occupancy of a property or unit based on its extremely low-income status in order to satisfy income-targeting requirements. (See paragraph 4-5 on income-targeting for details.)

**F. Matching Single Persons to Units**

Single persons are eligible families (if they meet all eligibility criteria for the property). However, single persons may not be placed on the two-bedroom waiting list or occupy a unit with two or more bedrooms except a person with a disability who needs the larger unit as a reasonable accommodation or an elderly person who has a verifiable need for a larger unit. Also a displaced person may be placed on the waiting lists for two-bedroom or larger units if no one-bedroom units are available. See paragraph \* 3-23 G\* for more information about assigning units larger than required.



## 4-16 Creating and Maintaining Waiting Lists

### A. Key Requirements

1. Receiving the application. Upon receipt of an application for tenancy or assistance, the owner must process the application for admission, or, based on a preliminary eligibility determination, reject the applicant. Examples of applicants who might be rejected based upon a preliminary eligibility determination include a 35-year old individual applying for a unit in a Section 202 PRAC property, a household of eight applying to a property with only efficiency and one-bedroom units, and an applicant with income that is \$7,000 over the income limit.
2. Recording the application. The owner's records must indicate the date and time the applicant submitted an application.
3. Preferences. Owners must collect information about the preferences for which the applicant qualifies so that they are able to select applicants from the waiting list in accordance with preferences established for the property. (See paragraph 4-6 for additional information about preferences.)
4. Providing notice. The owner must provide notice of closing of the waiting list.

### B. Opening and Closing the Waiting List

Owners should monitor the vacancies in their properties and their waiting lists regularly to ensure that there are enough applicants to fill the vacancies. Furthermore, owners should monitor their waiting list to make sure that they do not become so long that the wait for a unit becomes excessive.

1. Closing waiting lists.
  - a. The waiting list may be closed for one or more unit sizes when the average wait is excessive (e.g., one year or more).
  - b. When the owner closes the list, the owner must advise potential applicants that the waiting list is closed and refuse to take additional applications.
  - c. When the owner decides to no longer accept applications, the owner must also publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications.

**2. Opening waiting lists.**

- a. When the owner agrees to accept applications again, the notice of this action must be announced in a publication likely to be read by potential applicants in the same manner (if possible, in the same publications) as the notification that the waiting list was closed. The notifications should be extensive, and the rules for applying and the order in which applications will be processed should be stated.
- b. Advertisements should include where and when to apply and should conform to the advertising and outreach activities described in the Affirmative Fair Housing Marketing Plan.

**C. Determining an Applicant's Preliminary Eligibility**

1. Owners should make a preliminary eligibility determination before putting a household on the waiting list.
  - a. The owner reviews the application to ensure that there are no obvious factors that would make the applicant ineligible.
  - b. If a preliminary screening indicates that a family is eligible for tenancy, but units of appropriate size are not vacant, the owner must place the family on the waiting list for the property and notify the family when a suitable unit becomes available. A final eligibility determination is made at the time the unit is available. (See discussion of unit size determinations in paragraph \* 3-23.\*)
  - c. Using this system, the owner avoids performing the eligibility determination twice before admitting the applicant to the property, but the result may be that applicants placed on the waiting list may ultimately be found to be ineligible.
2. Alternatively, owners may choose to place applicants on the waiting list after making a more in-depth eligibility determination. If a property's waiting list is short, this approach can be a good practice to help place applicants quickly when they reach the top of the waiting list. However, if an applicant remains on the waiting list for an extended period of time, the owner will need to complete another full determination once the applicant reaches the top of the list.
3. If an applicant is otherwise eligible for tenancy but no appropriate size unit exists in the property, the owner must reject the application. (See paragraph 4.9 for more information about rejecting applicants.)
4. Applicants who are obviously not eligible for tenancy must be rejected. (See paragraph 4-9.)

#### D. Creating Waiting Lists

To ensure that applicants are appropriately and fairly selected for the next available unit, it is essential for owners to maintain waiting lists with appropriate information taken from the application for tenancy.

1. Plan of list maintenance. In order to ensure that all applicants are treated fairly, the tenant selection plan must describe how the waiting list is maintained.
2. Updates of waiting list. Keeping the waiting list as up-to-date as possible will help reduce errors and minimize the administrative resources expended on processing information regarding applicants who are ineligible or no longer interested in residing in the property.
  - a. Owners may periodically update their waiting lists.
  - b. Owners may require applicants to contact the property every six months in order to stay on the waiting lists.
3. Data included on the waiting list. The waiting list must include the following data taken from the application:
  - a. Date and time the applicant submitted an application;
  - b. Name of head of household;
  - c. Annual income level (used to estimate levels for income-targeting, i.e., extremely low-income, very low-income, and low-income) (See discussion of income limits in paragraph 3-6);
  - d. Identification of the need for an accessible unit, including the need for accessible features;
  - e. Preference status; and
  - f. Unit size.

**NOTE:** See Figure 4-5 for a sample waiting list format.

4. Excluding data from the waiting list. While additional information, such as race/ethnicity, gender, and family size is collected on pre-applications and applications and retained in property files, it is good practice to avoid including these types of data on the property waiting list. This information is not directly relevant to tenant selection and might result in discrimination against some applicants.
5. Applicant presence on multiple waiting lists. An applicant may be on multiple waiting lists (or waiting for more than one unit size). Based upon the application dates and times and qualification for preferences (if used), placement on these multiple lists may vary.

Figure 4-5: Sample Waiting List Format

Date of Application	Time of Application	Head of Household	Unit Size	Income Level			Need for Accessible Unit		Comment/Contact	Removed/Rejected Date	Move-in Date	Preference Type
				ELI	VLI	LI	Y	N				
12/3/01	10:30 AM	Mary Tate	2	X				X				Working family preference; Elderly preference
12/4/01	1:00 PM	Hiroshi Kihara	2		X		X					

#### 4-17 Placing Families with Disabled Family Members

- A. An owner must not skip over a family that has reached the top of the list and has indicated a need for certain unit accommodations because of a disability. If separate waiting lists are used for persons with disabilities, they must also be placed on the general waiting list and given the option of the next available unit if they come to the top of the list.
- B. The family must be given the opportunity to benefit from the program and decide for itself, in compliance with Section 504, whether a unit meets the needs of the family, based on size, location, or facilities. This means that the owner must notify the household whenever any unit becomes available, without regard to unit accessibility.
- C. The applicant may decide to accept a standard unit, particularly when units meeting the household's needs are in short supply. The family may accept the unit and request some modification to the unit as a reasonable accommodation. (See further discussion of Section 504 requirements in Chapter 2, Section 3, Subsections 4 and 5.)
- D. Families who have a member who needs the accessibility feature of the unit take priority to occupy accessible units over families with no disabled family members.

**NOTE:** See paragraph 2-32 for additional information on assigning accessible units.

## **4-18 Documenting Changes to Waiting Lists**

### **A. Overview**

Whenever a change is made in the waiting list, an action is taken, or an activity specific to an applicant occurs, a notation must be made on the waiting list.

### **B. Providing an Auditable Record of Changes to Waiting Lists**

The goal of the annotation is to provide an auditable record of applicant additions, selections, withdrawals, and rejections. Independent reviewers looking at the waiting list should be able to:

1. Find an applicant on the waiting list;
2. Readily confirm that an applicant was housed at the appropriate time based on unit size needs, preferences, and income-targeting; and
3. Trace various actions taken with respect to a family's application for tenancy.

### **C. Maintaining Documentation of the Waiting Lists**

Owners must develop a method to maintain documentation of the waiting list composition, application status, and actions taken.

1. The method adopted by an owner will vary based upon the level of automation used at the property.
2. Owners should periodically analyze their waiting list policies and documentation procedures to determine whether an independent party reviewing the list and its supporting documentation could follow the actions taken, applicable preferences, and reasons why certain individuals may have been selected ahead of others on the waiting list. If not, the owner must make the waiting list format and associated practices more transparent.

### **D. Maintaining Records of Manually Recorded Waiting Lists**

An owner may keep a manual property waiting list.

1. Manually maintained waiting lists must be maintained as a permanent record.
  - a. The list must not be "rewritten."
  - b. The list must be maintained in a manner that cannot easily be altered.
  - c. The list must be kept in a manner that can be audited.

2. The manual waiting list must provide an easily viewable record of the date and time of application, and date and time of selection from the waiting list.

#### **E. Maintaining Records for Electronic Waiting Lists**

Owners may maintain an electronic waiting list (instead of a manual property waiting list).

1. Electronic waiting lists must have a mechanism for maintaining the date and time of each applicant's placement on or selection from the waiting list and a way to document changes made to the list. The following are examples of methods that owners might use to track inputs to the electronic waiting list and changes to it.
  - a. Use a data backup function to record the time and date of entry of new applications and changes to existing records in the electronic waiting list.
  - b. Print a record of the appearance of the waiting list as often as necessary (at least monthly) to show each applicant's placement on and selection from the list. The time and the date of the printout should appear on the report. The owner can file this information in the tenant file and in a central waiting list selection file.
  - c. Whenever status changes occur, such as changes in family composition and unit size, the change should be recorded with an explanation, and the re-sorted list should be printed.
2. To the extent possible, the owner should use electronic safeguards, such as assigning waiting list password access only to individuals responsible for maintaining the system. Ideally, a system should record the user name and the time, date, and action entered whenever a record is changed or entered in the electronic waiting list.

#### **4-19 Updating Waiting List Information**

- A. The owner should update the waiting lists annually or semi-annually to ensure that applicant information is current and that any names that should no longer be on the list are removed.
- B. If the household composition changes, the owner must update the waiting list information and decide whether the household needs the same or a different unit size. The owner's written policy will determine if the family maintains the original application date or if the place on the waiting list is based on the date of the new determination of family composition.
- C. The owner must establish occupancy standards as part of the property's tenant selection plan and consistently apply those standards in assigning unit size to

applicants. (See paragraph \* 3-23 \* for more information about occupancy standards.)

#### **Example - Applicant Change in Household Composition**

The Chiu family applied to the Dogwood Apartments project on 5/12/01. They have been assigned to the two-bedroom waiting list. The family includes Liang and Jun Chiu and a 3-year-old daughter. On 2/21/02, Jun Chiu gives birth to twins. The family notifies Dogwood of this change in family composition on 2/25/02. The family is now in need of a three-bedroom unit.

The owner's policy in the tenant selection plan for the property allows a family to have as many as two-persons per bedroom, but permits larger units based on the age differences between children and the relationships of adults.

Because the family size now results in more than two persons per bedroom in a two-bedroom unit, the owner must now move the family to the three-bedroom waiting list, with an application date of 5/12/01. The owner's written policy allows the applicant to retain the original application date.

If there are no three-bedroom units in the property, the family must be notified that they are not eligible for the property and removed from further consideration on the waiting list. This action must be documented on the waiting list, and proper written notification must be provided to the family.

- D. If the applicant contact information changes, such as the address or phone number, the owner must note the new information and the date it was received on the application submitted by the family and must ensure that the waiting list (either manual or electronic) is accurately updated.

#### **4-20 Removing Names from the Waiting List**

The owner must document removal of any names from the waiting list with the time and date of the removal.

- A. The tenant selection plan must include a written policy that describes when applicant names will be removed from the waiting list. Examples of applicant removal policies an owner may adopt are:
1. The applicant no longer meets the eligibility requirements for the property or program;
  2. The applicant fails to respond to a written notice for an eligibility interview;
  3. The applicant is offered and rejects two units in the property (or any number of unit offers as specified in the owner's written policies);
  4. Mail sent to the applicant's address is returned as undeliverable; or
  5. The unit that is needed – using family size as the basis – changes, and no appropriate size unit exists in the property.

- B. The owner must periodically print out electronic waiting lists or preserve backup copies showing how the waiting list appeared before and after the removal of each name.

#### **4-21 Reinstating Applicants to the Waiting List**

If an applicant is removed from the list, and subsequently the owner determines that an error was made in removing the applicant (e.g., the incorrect address was used in sending mail to the applicant), the applicant must be reinstated at the original place on the waiting list.

#### **4-22 Record-Keeping**

- A. The owner must retain current applications as long as their status on the waiting list is active.
- B. Once the applicant is taken off the waiting list, the owner must retain the application, initial rejection notice, applicant reply, copy of the owner's final response, and all documentation supporting the reason for removal from the list for three years.
- C. When an applicant moves in and begins to receive assistance, the application must be maintained in the tenant file for the duration of the tenancy and for three years after the tenant leaves the property.
- D. All files must be kept secure so that personal information remains confidential.
- E. Owners must keep records and submit reports and information as required by HUD to enable HUD and the owner to ascertain whether the owner has complied, or is complying with, nondiscrimination requirements. (See Chapter 2.)

### **Section 4: Selecting Tenants from the Waiting List**

#### **4-23 General**

- A. Once an owner has solicited applications and developed a waiting list for applicants for whom no unit is immediately available, the owner must select applicants from the waiting list and offer units in the order required by HUD rules and owner policies. This section describes options for the owner and provides guidance on how to carry out these activities.
- B. When a unit becomes vacant, the owner must select the next applicant from the waiting list based on the unit size available, preferences established for the property, income-targeting policies and requirements, and screening policies applied by the owner. The owner will select the first name on the waiting list for the appropriate unit size (or list of names for units reserved for disabled applicants) and make a final determination of eligibility and suitability for tenancy,



using the criteria described in Chapter 3, Sections 1 and 2, and the procedures in this section.

#### 4-24 Applicant Interviews

- A. When an appropriate unit will be available in the near future, the owner must interview an applicant and obtain current information about the family's circumstances. For documents that an owner may ask applicants to bring to the interview, see Exhibit 4-1.
- B. At the interview, the owner must:
  - 1. Confirm and update all information provided on the application. If a pre-application was submitted, complete a full application form and confirm and update the information.
  - 2. Explain program requirements, verification procedures, and penalties for false information. The penalties include eviction, loss of assistance, fines up to \$10,000, and imprisonment up to five years.
  - 3. Obtain family income and composition information and other data needed to verify eligibility and compute the tenant's share of the rent. (See Chapter 5.)
  - 4. Review the financial information on the application and specifically ask the tenant whether any member of the household:
    - a. Receives any of the types of income listed in Chapter 5, Section 1 (e.g., self-employment income, unemployment compensation, income maintenance payments). If it appears likely that an applicant is receiving a form of income not reported on the application, ask the applicant about that source of income and document the applicant's response in the file; and
    - b. Has any assets. (See paragraph 5-7 for a description of assets.)
  - 5. Ask the head of household, spouse, or co-head, and household members age 18 and over to sign the release of information consent portion of the Authorization for Release of Information (Forms HUD 9887 and 9887-A) and any other necessary verification requests.
  - 6. Obtain declaration of citizenship and consent forms for verification from all household members as appropriate.
  - 7. Inform the applicant of the screening requirements used by the owner. (If the owner performs screening activities, a consent to check landlord or credit history should also be obtained).
  - 8. Require the head of household, spouse, or co-head to give a written certification as to whether any family member did/did not dispose of any

assets for less than fair market value during the two years preceding the effective date of the certification/recertification.

- a. The certification must include a list of all assets disposed of for less than fair market value, the dates disposed of, the amount received, and the asset's market value at the time of disposition.
- b. HUD does not prescribe a form for this certification. It may be part of an application form or a separate form.

**NOTE:** Owners need not obtain this information if the family is being considered only for a unit in a BMIR project without rental assistance because the disposal of assets does not affect income and rent calculations for BMIR tenants who do not receive rental assistance.

9. Require the head, spouse, or co-head and all family members age 6 or older to disclose and document all SSNs or execute a certification when a SSN has not been assigned. (See paragraph 3-9 for more information on SSN disclosure.) If one or more members of the family are under 18 years of age, the certification will be executed by their parent or guardian.
  10. Advise the family that HUD will compare the information supplied with information federal, state, or local agencies have on the family's income and household composition.
  11. Tell the family that a final decision on eligibility cannot be made until all verifications are complete.
  12. Provide each tenant with a copy of the appropriate HUD fact sheet, which describes how the tenant's rent is calculated. See **Appendix 14** for copies of these fact sheets.
  13. Inform the family that federal laws prohibit the owner from discriminating against individuals with disabilities. In summary, owners have responsibilities for making reasonable accommodations in policies, providing auxiliary aids, making units and facilities accessible, and permitting disabled persons to use assistance animals when they may provide the tenant with equal housing opportunities.
  14. Inform all applicants of housing for the elderly or disabled about the rules on owning pets. (See paragraph 6-10.)
- C. Generally, owners may not require tenants to participate in congregate meals or other services. However, in properties for the elderly or disabled for which HUD approved a mandatory meals program before April 1, 1987, the owner must inform all applicants about:
1. The requirement to execute a meals contract. A meal contract is a separate contract incorporated as part of the lease that states in part:

- a. Substantial failure by a tenant to comply with the mandatory meals agreement will be a violation of the lease and will subject the tenant to eviction procedures in accordance with the lease;
  - b. The number of meals required to be purchased;
  - c. The duration of the meals agreement;
  - d. The charges for the meals at the time the agreement is signed; and
  - e. The exemptions from purchasing meals and the requirements to obtain these exemptions.
2. Exemptions from purchasing meals may be made due to:
  - a. Medical conditions;
  - b. A paying job that keeps the tenant away from the property at meal time;
  - c. Other absence from the property;
  - d. Permanent immobility; and/or
  - e. Discretionary exemptions, such as dietary practices, financial reasons, or religious reasons.

**4-25 Applying Income Targeting Requirements in Section 8 Properties**

- A. HUD does not prescribe a method to ensure compliance with income-targeting. Sample steps that an owner may want to follow are listed in Figure 4-6.

**Figure 4-6: Sample Steps Owners May Use to Implement Income-Targeting**

**Step 1:** Estimate annual turnover for the property based on turnover history.

**Step 2:** Analyze the waiting list by income category, looking particularly at the top of the list, that is, those applicants who are likely to be offered units during the coming year.

**Step 3:** Take no action if at least 40% of the applicants on the waiting list who are expected to be offered units during the year have incomes at or below the extremely low-income limit. Applicants may be admitted in order, and compliance with the income-targeting rules will likely be achieved. Monitor quarterly to confirm compliance.

**Step 4:** If at least 40% of the applicants who are expected to be offered units in the next year do not have incomes at or below the extremely low-income limit, then the property must establish tenant selection procedures to ensure that the 40% requirement is met. Owners should also consider increasing their efforts to market to extremely low-income applicants to ensure that a sufficient number of applicants on the waiting list meet the income-targeting requirements.

**See the discussion and examples following this figure for methodologies designed to achieve the income targeting requirements.**

- B. Owners may not select families for unit/property occupancy in an order inconsistent with the waiting list in order to house relatively higher-income families. However, an owner may select a family for occupancy of a property or unit based on its extremely low-income status in order to satisfy income-targeting requirements. (See paragraph 4-5 for an explanation of the income-targeting requirement.)
- C. Regardless of the method chosen to comply with the income-targeting rule, the results should be monitored quarterly and adjusted if necessary. The selected method must be stated in the property's tenant selection plan.

**NOTE:** Tracking initial \* admissions to the Section 8 project based assistance program is \* important to ensure accurate tracking.

**Example**

A 100 unit Section 236 property with 50 Section 8 subsidy units is 100% occupied and has very little turnover. A Section 8 tenant moves out of the property. The manager would like to give the Section 8 assistance to a Section 236 very low-income family who qualifies for Section 8 assistance but must be sure that income targeting requirements will be met. If the owner determines that the income targeting requirement cannot be met by initially certifying a low-income tenant, the owner must fill the vacancy with an extremely low-income family from the waiting list.

- D. Occupancy records must be kept so that auditors and those performing management reviews can monitor for compliance with the income-targeting requirement. Reviewers will check the tenant selection plan for a written description of the process and then review the admissions to ensure that the process was followed and the results are in compliance. Both move-in and initial \* admissions \* records must be maintained for auditing purposes.
- E. If an owner actively markets to extremely low-income families but is unable to attract a sufficient number to lease 40% of available units during the year to extremely low-income families, the owner may rent to other eligible families after a reasonable marketing period.
- F. To market adequately the owner must, at a minimum, advertise in the locality and conduct outreach to local organizations serving the extremely low-income population for no less than 30 days. If, after that period of time (with documentation of the marketing efforts), the owner is unable to attract eligible extremely low-income applicants, the owner may admit other eligible families. The owner must continue to advertise to extremely low-income applicants. Both the initial and ongoing marketing must be in compliance with the Affirmative Fair Housing Marketing Plan.
- G. The owner must maintain records that demonstrate to HUD's satisfaction that all reasonable steps were taken to fill these units with extremely low-income tenants.
- H. Whatever method is used by owners to meet the income targeting requirement for Section 8 properties, they must periodically monitor actual admissions to ensure that at least 40% of admissions are extremely low-income families.
  - 1. If an owner chooses to follow the waiting list chronologically and through monitoring determines that the income-targeting goal will not be met, a specific targeting methodology may be implemented during the year. (See Example 1 – Income-Targeting Method \* below \*.) In such circumstances, the owner must clearly document in property records the date of any revision to the property's income targeting procedures. In

addition, the owner must make the revised methodology very clear to any applicants who are selected from the waiting list after the change in methodology.

2. If an owner uses a method other than the standard waiting list order, and the monitoring results show that more than 40% of admissions are extremely low-income families, the owner may revise the tenant selection procedure to follow the waiting list in chronological order for the remainder of the year. Again, if the method is changed mid-year, documentation must be kept indicating the reason and date of such change.
  3. An example of an admissions log is shown below. An owner can use this type of log to monitor the percentage of extremely low-income admissions to a property during the year. In the example below, assume that the owner's methodology is to alternate between the first extremely low-income applicant on the waiting list and the eligible applicant at the top of the waiting list.
- I. Owners of properties with project-based Section 8 must comply with TRACS income-reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-targeting requirements.

### Example 1 – Income-Targeting Method

**Methodology: Select (at minimum) an extremely low-income applicant to be admitted to every other vacant unit.**

Happy Acres: 110 units – contains both efficiencies and 1-bedroom units  
Section 8 New Construction Property  
HAP Effective Date: 11/15/81  
Anticipated annual turnover: 10%, or 11 units

#### *Waiting List*

##### Efficiency

Alice Johnson (VLI)  
Aiko Kihara (ELI)  
Tina Purcell (ELI)  
Rita White (VLI)  
Betty Harvey (VLI)  
Jean Miller (ELI)  
Randy Lopez (ELI)

##### 1-Bedroom

Phil Jones (VLI)  
Maria Rodriguez (ELI)  
Elsa Anderson (ELI)  
Bill Rogers (VLI)  
Uja Gupta (VLI)  
Robert Johnson (VLI)  
Sam Sorenson (ELI)

**Analysis to determine whether a method other than following the waiting list in chronological order is needed:**

- 5 applicants with ELI must be admitted to the property
- Of the top 14 applicants from the waiting list, seven (50%) have extremely low-incomes. It appears that by following the waiting list in chronological order, the property will meet the 40% requirement.
- However, if the 11 vacancies occur in a mix of five efficiencies and six 1-bedroom units, then the percentage of those admitted with extremely low-incomes will be only 36% (4 units) following the order of the waiting list.
- The owner may decide to monitor admission carefully and change policies mid-year if the targeting goal is not being achieved, or may develop another method to ensure compliance. Monitoring is essential.

**Owner Policy on Admissions:** This owner has decided to follow the waiting list in chronological order. The Tenant Selection Plan states that: "Applicants will be selected based on waiting list order. Each quarter, the percentage of extremely low-income admissions for the year to date will be examined. An alternate tenant selection method will be implemented if extremely low-income admissions are:

- Less than 30% after the first quarter of the fiscal year.
- Less than 35% after the second quarter of the fiscal year.
- Less than 40% after the third quarter of the fiscal year.

This policy will ensure that, regardless of which bedroom size units become available, the owner will meet the income targeting requirements.

**Example 2 – Income-Targeting Method**

**Methodology:** Admit extremely low-income families to the first 40% of expected vacancies and then admit eligible applicants from the top of the list regardless of income.

Friendship Heights: 80 units - contains both efficiencies and 1-bedroom units

Section 8 New Construction Property

HAP Effective Date: 3/27/80

Anticipated annual turnover: 10%, or 8 units

*Waiting List*Efficiency

Alice Johnson (VLI)  
Aiko Kihara (ELI)  
James Johnson (VLI)  
Rita White (VLI)  
Betty Harvey (VLI)  
Jean Miller (ELI)  
Randy Lopez (ELI)

1-Bedroom

Phil Jones (VLI)  
Maria Rodriguez (ELI)  
Elsa Anderson (ELI)  
Aretha Samuels (ELI)  
Uja Gupta (VLI)  
Robert Johnson (VLI)  
Sam Sorenson (ELI)

**Analysis to determine whether a method other than following the waiting list in chronological order is needed:** In this property, following the waiting list may not achieve the required results, depending on where the vacancies occur.

- Four admissions must be extremely low-income applicants to achieve the targeting goal.
- If there are five vacancies in the efficiencies and three in the 1-bedrooms, and the list is followed in chronological order, the owner will not achieve 40% ELI admissions. In order to comply, the owner will have to skip some of the applicants with higher incomes.

**Owner policy on admissions:** The owner chooses to meet the target based on expected vacancies first, and then use the waiting list in chronological order. The Tenant Selection plan states that: "Extremely low-income applicants will be selected from the waiting list first to occupy 40% of the number of units expected to be filled during the year. Subsequently, families will be selected from the top of the waiting list, regardless of income." (i.e., if 6 vacant units are projected, the owner selects 3 extremely low-income families from the list first, then goes to the top of the list for eligible families regardless of income).



**Example Admissions Log to Track Income-Targeting Progress**

<b>A: Type of Admission - Based Upon Targeting Methodology</b>	<b>B: Family Name</b>	<b>C: Extremely Low- Income  (check if family is ELI)</b>	<b>D: Very Low- or Low-Income  (check if family is LI or VLI)</b>	<b>E: Percentage of Total Admissions That Are Extremely Low- Income*</b>
Extremely Low Income (ELI)	Aiko Kihara	X		
Top of Waiting List (TOL)	Alice Johnson		X	
ELI	Tina Purcell	X		
TOL	Rita White		X	
ELI	Jean Miller	X		
TOL	Betty Harvey		X	
ELI	Randy Lopez	X		
Total		4	3	57%

**\*NOTE:** The percentage in Column E is calculated by dividing the number of extremely low-income families admitted (Column C) by the total number of families admitted (Column C plus Column D).

#### 4-26 Verification of Preferences

##### A. Key Requirements

Preferences claimed by applicants must be verified. Owners may:

1. Verify qualifications for preferences at the time the application is submitted if the tenant is placed on the waiting list; or
2. Verify qualifications for preferences when a unit becomes available.

##### B. Acceptable Verification Methods

1. Verification of displacement. The applicant must provide documentation of government displacement or displacement as a result of a presidentially declared disaster. Acceptable documentation includes

copies of local government condemnation or displacement notices or government notices indicating that an applicant is eligible for disaster relief benefits. If these documents are not available, the owner may accept a letter (on appropriate letterhead) from a government organization confirming that the applicant is being displaced by government action or a presidentially declared disaster. If written documents cannot be obtained, the owner may verify the displacement by phone with the local government office, or a disaster relief office, and make a notation in the file as to the date of the oral verification.

2. Verification of military status. The applicant may provide a current military identification card or a letter on appropriate letterhead confirming current military status. The owner must collect the documentation for the head of household, spouse, or co-head.
3. Verification of income (to determine ranking status for a Section 236 project with RAP assistance). The owner must verify the family income as described in Chapter 5, Section 3, so the type of subsidy for which the family is eligible can be determined.
4. Verification of other preferences.
  - a. State and local preferences. Verification will depend on the type of preference that is adopted. For example, a preference for veterans may be verified with any of the following:
    - (1) A letter from the Veterans Administration (VA);
    - (2) A document indicating that the applicant receives VA benefits; or
    - (3) Military discharge documents.
  - b. Residency preferences. Documentation of the residential address within the municipality may be obtained from copies of utility bills (electricity or gas), lease agreements, or other documents that include a residential address and the name of the head of household, co-head, or spouse. Persons who are planning to live in the municipality as a result of current or planned employment may provide a letter from a current or future employer or a current work identification badge with the office address.
  - c. Working families. Documentation of employment may include a letter from an employer or payroll check stubs.
  - d. Disability. Documentation of disability must confirm only the existence of a disability and not the nature or extent of the disability. Verification of disability may be provided by form or letter, from a physician, psychologist, clinical social worker, or other licensed health care professional. In addition, verification of disability may also be provided by documentation verifying receipt

of Social Security disability payments (i.e., award letter indicating disability payments are provided).

- e. Age. Documentation of age is used to confirm that applicants claiming an elderly preference are 62 years of age or older. Acceptable documentation may include birth certificates or social security or military documents that show the applicant's birth date.

#### 4-27 Implementing Screening Reviews

##### A. Timing for Conducting Screening Reviews

All screening activities should occur prior to approval of tenancy. Screening generally occurs at the same time as, or immediately following, the full eligibility review but may occur earlier.

##### B. Screening for Credit History

1. Owners may reject an applicant for a poor credit history, but owners must not reject an applicant for lack of a credit history.
2. There are two primary sources that owners use to determine credit history.
  - a. Previous landlords. It is good practice to contact the applicant's previous landlords to determine if the applicant paid rent on time.
  - b. Credit report companies. There are a number of private companies that can provide owners with a credit report on an applicant. These private companies charge a fee for this service. Owners may use such services but may not pass on these fees to the applicant. At an additional cost, some companies can provide additional information by searching public databases for criminal records. Owners must be consistent in the use of credit reporting services.

##### C. Screening for Rental History

1. The most common method for assessing rental history is to ask for comments from the applicant's current and former landlords. When collecting information from landlords, it is important to collect objective information. Figure 4-7 provides examples of objective questions that are appropriate to ask. It also includes examples of inappropriate or subjective questions that should not be asked.
2. Information that an owner may learn from a landlord that may be grounds for rejecting an applicant includes:
  - a. Failure to cooperate with recertification procedures;
  - b. Violations of house rules;

- c. Violations of the lease;

**Figure 4-7: Questions for Current and Former Landlords**

Objective/Acceptable Questions
<ul style="list-style-type: none"> <li>• Was the tenant ever late with a rent payment? If yes, when and how many times was the tenant late?</li> <li>• Did other lease violations occur? If so, what were they? How frequently did each of the other lease violations occur?</li> <li>• Was the tenant ever cited for disturbing behavior? How often?</li> <li>• Did the tenant violate house rules? What rules were violated, and how many times did violations occur?</li> <li>• Was the tenant evicted?</li> </ul>
Inappropriate Questions
<ul style="list-style-type: none"> <li>• Did the tenant's boyfriend/girlfriend visit often?</li> <li>• Did the tenant make lots of complaints to the owner?</li> <li>• What is the tenant's reputation?</li> </ul>

- d. History of disruptive behavior;
- e. Poor housekeeping practices;
- f. Previous evictions;
- g. Termination of assistance for fraud; or
- h. Conviction for the illegal manufacture, distribution, or use of controlled substances.
3. Owners may want to consider relying more heavily on former landlord references than on current landlord references. A current landlord may be tempted to provide a good reference for a bad tenant so that the tenant will voluntarily leave his/her property. Former landlords do not have this reason to provide misleading information, and, therefore, may provide more accurate references.

**D. Screening for Housekeeping**

1. Poor housekeeping habits might be described as those that create an unsafe or unhealthy environment, e.g., an uncontrolled accumulation of trash, which has led to roach infestation or poses a health danger to other residents.
2. If visiting an applicant's current home is part of the owner's screening practices, the owner must visit the homes of all applicants.
3. If an applicant is living with someone else, and the housekeeping is out of control of the applicant, the owner must not deny admission to the applicant. The owner should evaluate only the living quarters over which the applicant has control.

**E. Screening for Drug Abuse and Other Criminal Activity**

1. HUD requires that owners develop tenant selection plans that contain prohibitions against the admission of applicants who are engaging or have engaged in drug abuse or criminal activity. The specific requirements for developing the plan are found in paragraph 4-7 C.
2. Owners must require every adult member of an applicant household to sign a consent form allowing all relevant criminal information to be released.
3. \* Owners are not required to conduct a background check on applicants applying for an unassisted unit or tenants living in an unassisted unit in a project-based property. Owners may conduct background checks on applicants for unassisted units if they wish. \*
4. In order to meet the screening requirements, owners may need to obtain access to criminal records. Owners may choose from several sources to obtain the screening information:
  - a. An owner may use the local Public Housing Authority (PHA) to conduct the appropriate check of an applicant's criminal conviction history and to make the screening determination.
  - b. The owner may use alternative sources, including private credit and screening services, to check available databases storing criminal history.
5. If the owner selects a PHA to obtain criminal conviction records, the PHA will use the criminal records received from the law enforcement agency along with the owner's screening criteria to determine, on behalf of the owner, the suitability of the applicant for tenancy. If the owner uses the PHA to conduct the criminal background check, procedures to be used include:

- a. Owners may request that the PHA in the jurisdiction of the property obtain criminal conviction records for screening purposes. The request must include a copy of the signed consent form(s) and the project standards for prohibiting admission.
  - b. The PHA, upon receipt of the owner's request, will request criminal conviction records from the law enforcement agency.
  - c. The law enforcement agency must promptly release a certified copy of the record. National Crime Information Center (NCIC) records are provided in accordance with NCIC procedures.
  - d. The PHA must determine whether criminal action by a household member, as shown by the conviction records, may be a basis for screening out the applicant and notify the owner making the request.
  - e. The PHA may charge the owner a reasonable fee for processing requests and may also require the owner to reimburse the PHA fees charged by law enforcement agencies.
  - f. The PHA is required to maintain the criminal records in a confidential manner and may not disclose the contents to the owner.
6. If the owner uses alternative sources to screen for criminal activities, the owner may consider the following when identifying potential information sources:
    - a. Obtain information from each city, county, and/or state where the applicant was a resident;
    - b. Attempt to obtain information that includes an applicant's arrest record, in addition to the conviction record; and
    - c. Establish guidelines for "reasonable cause to believe" when screening for illegal drug use and abuse of alcohol that interferes with other residents' health, safety, and right to peaceful enjoyment of the property.

#### **4-28 Ensuring That Screening Is Performed Consistently**

##### **A. Procedures**

While owners have discretion in establishing screening criteria, they must apply the criteria consistently to all applicants. To ensure that applicants are treated consistently during the screening process, good practice suggests that owners should:

1. Use consistent staffing. Have one or a limited number of staff conduct the screening to reduce inconsistencies that occur, because employees may interpret policies and procedures differently.
2. Provide instructions. Develop step-by-step instructions for staff who are conducting screening activities to help to ensure consistency.
3. Use standard forms. Whenever possible, use standard forms to document fair practices and to increase the likelihood that each applicant will receive the same consideration.
4. Use objective criteria. For example, when interviewing an applicant's former landlord about rent payment and rental history, the owner should ask fact-based questions. Owners must avoid subjective questions that ask for opinions or do not directly relate to the tenant's ability to meet the requirements of the lease. (See Figure 4-7 for examples of appropriate and inappropriate questions.)
5. Follow a formal, written process for collecting information. Owners must not take into consideration informal information or "gossip" about an applicant. Such information may be discriminatory and will affect applicants inconsistently since the owner does not collect it for all applicants.

**B. Extenuating Circumstances**

An owner may have a policy to consider extenuating circumstances that would allow acceptance of an applicant whom the owner would normally reject, but an owner must not have a reverse policy to consider extenuating circumstances to reject an applicant who was determined to be eligible.

**Example – Extenuating Circumstances**

Through the screening process, an owner learns that Asad Bhatt was evicted from his last apartment for nonpayment of rent. The owner rejects Asad Bhatt's application and informs him of the reason for the rejection. Asad explains that his failure to pay rent on time resulted from the need to purchase expensive medications for his seriously ill wife. His wife is now well, and his medical expenses have been paid. Asad asks for reconsideration of his application, because he believes he will be able to pay rent on time.

If the owner has a policy of considering extenuating circumstances for any tenant, the owner would be required to consider the extenuating circumstances applicable to Asad. In evaluating whether to accept Asad as a tenant, the owner may verify that Asad paid rent on time prior to his wife's illness and that medical expenses have been paid. If the owner learns from a landlord reference that Asad's rent had been chronically late prior to his wife's illness, the owner may deny admission to Asad in accordance with the owner's written screening procedures. If the owner does not have a policy of considering extenuating circumstances, the owner may not consider such circumstances as described by Asad.

#### 4-29 Verifying the Need for Accessible Units

When an applicant requests an accessible unit or a unit preference, such as a first floor unit, the owner may conduct inquiries to:

- A. Verify that the applicant is qualified for the unit, which is only available to persons with a disability or to persons with a particular type of disability. For example, an applicant with a physical disability who uses a wheelchair may not be eligible for a unit that is specifically designed and intended for a person with a visual disability.
- B. Verify that the applicant needs the features of the unit as an accommodation to his or her disability. For example, an individual with a psychiatric disability (assuming no physical disability) requests a unit with features designed to be accessible for individuals with mobility disabilities. In this situation, there is no relation between the individual's psychiatric disability and the need for an accessible unit. Although an alternate accommodation may be required to accommodate the applicant's psychiatric disability, the applicant would not be entitled to the accessible unit requested. **NOTE:** Owners may not request information about an applicant's type of disability but may identify an applicant's need for the features of accessible units or for a reasonable accommodation.
- C. Verify that the applicant is qualified to receive a priority on the waiting list available to persons with a disability or to persons with a particular type of disability. If the owner gives a priority to a class of persons, and an applicant indicates that he or she is qualified for the priority placement on the waiting list, the owner may screen to verify that the applicant qualifies for the priority placement.

#### 4-30 Addressing Requests for Reasonable Accommodations

For guidance on reviewing requests for reasonable accommodations, refer to Chapter 2, Section 3, subsection 4.

##### Example – Reasonable Accommodation

As part of the screening process and before admission to the property, the owner of Poplar Court requires all applicants to come to a session to review the house rules. The owner holds these sessions on the last Monday of each month. An applicant, Karen Jackson, has a disability and requests a reasonable accommodation so that she can attend a session on a different day of the week because she has physical therapy on Mondays. Rescheduling the interview for Karen would be a reasonable accommodation.



#### 4-31 Denial of Assistance to Noncitizens

This paragraph describes the conditions under which owners must deny assistance to noncitizens and the DHS appeals process that may be initiated by a family to challenge a denial. Owners should follow the HUD requirements provided within this paragraph to ensure that only U.S. citizens and eligible noncitizens receive federal housing assistance. This entire paragraph contains key regulatory requirements. Optional owner policies are noted in the text.

**NOTE:** See Chapters 3, 7, and 8 for other citizenship and eligible immigration status requirements. (Restriction on assistance to noncitizens is addressed in paragraph 3-12, changes in subsidy are addressed in paragraph 7-11, and termination of assistance is addressed in paragraph 8-7.)

##### A. Applicability

As stated in paragraph 3-12, the restriction on assistance to noncitizens applies to all properties covered by this handbook, except the following:

1. Section 221(d)(3) BMIR properties;
2. Section 202 PAC;
3. Section 202 PRAC; and
4. Section 811 PRAC.

##### B. Offering and Continuing Assistance

An owner cannot deny assistance to applicants who submitted their immigration documentation in a timely manner, but for whom the DHS verification or appeals process has not been completed.

1. If a unit is available, the family has come to the top of the waiting list, and at least one member of the family has submitted the required documentation in a timely manner \* and has been determined to be eligible\*, the owner must offer the family a unit, providing subsidy to those family members whose documents were received on time.
2. However, until the owner has received and verified the immigration status of any remaining noncitizen family members, the owner must provide \*full\* assistance to the family.

##### C. Events Triggering Denial of Assistance

An owner must deny assistance to an applicant upon the occurrence of any of the following:

1. The applicant fails to submit evidence of citizenship (i.e., the declaration) and eligible immigration status by the date specified by the owner.

2. The applicant submits evidence of citizenship and eligible immigration status on a timely basis, but DHS primary and secondary documentation does not verify eligible immigration status of a family member; and
  - a. The family does not pursue a DHS appeal or informal hearing rights as provided in this section, or
  - b. The family pursues a DHS appeal and informal hearing, but the final decision is against the family member.

**D. Required Notice**

The notice of denial or termination of assistance must advise the applicant family that:

1. The owner will deny or terminate rental assistance and give reasons for this action;
2. The family may be eligible for proration of assistance;
3. Tenants – but not applicants – may be eligible to obtain relief under the provisions for preservation of families (i.e., they may be eligible for a temporary deferral of denial of assistance).
4. The family has a right to request an appeal to the DHS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal;
5. The family has a right to request an informal hearing with the owner either upon completion of the DHS appeal or in lieu of the DHS appeal (the family can take advantage of two types of appeal); and
6. For applicants, the notice of denial must advise that if they have failed the primary and secondary verification and submitted an appeal to the DHS, but the DHS process has not been concluded, the applicant will receive assistance in a timely manner. (If the DHS decision is negative, the family's assistance may then be terminated.) However, once the DHS appeal process is complete, and the family receives a negative decision on the DHS appeal, the owner may delay assistance while providing the family with an opportunity for an informal meeting to appeal the decision.

**E. DHS Appeal Process**

1. Submission of appeal request. When the owner receives notification from the DHS that secondary verification has failed to confirm eligible immigration status, the owner must notify the family of this result. The family has 30 days from the date of the owner's notification to request an appeal of the DHS results. The family must make the request in writing directly to the DHS and must provide the owner with a copy of the written request for appeal and proof of mailing.

2. Documentation to be submitted as part of appeal to DHS. If the family has additional documentation or written explanation to support this appeal, the family must submit it directly to the DHS office. This material must include a copy of the DHS document verification request, Form DHS G-845S (used by the owner to process the secondary verification request), or any other form specified by the DHS, and a cover letter stating that the family is requesting an appeal of the DHS immigration status verification results. (See Exhibit 4-2, DHS Documentation Verification Request Form.)
3. When decision will be issued by DHS. The DHS will issue a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. The notice will be sent to the family, and a copy will be sent to the owner. If, for any reason, the DHS is unable to issue a decision within 30 days, the DHS will inform the family and owner of the reason for the delay.
4. Notification of DHS decision and of informal hearing procedures. When the owner receives a copy of the DHS decision, the owner must notify the family of its right to request an informal hearing on the owner's ineligibility determination.
5. No delay, denial, reduction, or termination of assistance until completion of DHS appeal process. Until any appeal made to the DHS is resolved, owners must not delay, deny, reduce, or terminate assistance on the basis of immigration status.
6. When request for informal hearing is to be made. If the DHS decision will cause the applicant to be denied, or if the family chooses not to appeal to DHS, the family may request that the owner provide an informal hearing. The request for a hearing must be made either within 30 days of receiving the notice from the owner denying assistance, or within 30 days of receiving the DHS appeal decision.
7. Retention of documents. The owner must retain for a minimum of 5 years the following documents that may have been submitted to the owner by the family, or provided to the owner as part of the DHS appeal or the informal hearing process:
  - a. The application for financial assistance;
  - b. The form completed by the family for income re-examination;
  - c. Photocopies of any original documents (front and back), including original DHS documents;
  - d. The signed verification consent form;
  - e. The DHS verification results;
  - f. The request for an DHS appeal;

- g. The final DHS determination;
- h. The request for an informal hearing; and
- i. The final informal hearing decision.

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## Chapter 4 Exhibits

- 4-1. Sample List of Records and Documents Owners May Ask Applicants to Bring to the Certification or Recertification Interview
- 4-2. DHS Document Verification Request Form
- 4-3. \* Form HUD-27061-H, *Race and Ethnic Data Reporting Form*

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### **Exhibit 4-1: Sample List of Records and Documents That Owners May Ask Applicants to Bring to the Certification or Recertification Interview**

**NOTE: Owners must attempt to collect third-party verifications where possible, but having the applicant bring the following information to the interview will assist the owner in obtaining the third-party verification.** The records and documents provided by the applicant could be used when third-party verification is not returned or obtainable.

#### **Records of Earned Income**

- Paycheck stub
- W-2 forms
- Income tax return – (state and/or federal)
- Wage tax receipts

#### **Records of Other Income**

- Pensions and annuities – latest check stub from issuing institution
- Social security – current award letter
- Unemployment compensation – determination letter Form 2000, Form UC 30, or latest check stub
- SSI – award letter
- TANF – award letter, recent check stub
- Worker's compensation – Form DOL 203, recent check stub
- Alimony – copy of court order
- Child support – copy of court order
- Education scholarships/stipends – award letter
- Trade union benefits – recent check stub
- Other public assistance – award letter
- Income from assets – credit union/bank/S&L statements, etc.

#### **Asset Information**

- Bank statements
- Stock/bond certificates
- Mortgage note
- Income tax return
- Certificates of deposit

#### **Records of Family Circumstances/Family Composition/Allowances**

- Work permit
- Statement of disability
- Social security record
- Adoption papers
- Income tax returns
- Legal documents showing formal adoption being pursued
- Birth certificates
- Copies of medical bills
- Social security cards/alternative documents
- Payment receipts for dependent care, child care, etc.



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**Exhibit 4-2: DHS Document Verification Request Form**

**NOTE:** See next page.

## DHS Document Verification Request Form

U.S. Department of Justice  
Immigration and Naturalization Service

SAVE

OMB #1115-0122  
Document Verification Request

To: Immigration and Naturalization Service

6. Verification Number

7. ☐ Photocopy of Document Attached.  
(If printed on both sides, attach a copy of the front and of the back.)
- ☐ Other Information Attached (Specify documents)

From: Typed or Stamped Name and Address of Submitting Agency

Attn: Status Verifier

1. Alien Registration or I-94 Number

2. Applicant's Name (Last, First, Middle)

3. Nationality

4. Date of Birth (Month/Day/Year)

5. Social Security Number

8. (Benefit)	(Your Case Number)
<input type="checkbox"/> AFDC	
<input type="checkbox"/> Education Grant/Loans/Workstudy	
<input type="checkbox"/> Food Stamp	
<input type="checkbox"/> Housing Assistance	
<input type="checkbox"/> Medicaid/Medical Assistance	
<input type="checkbox"/> Unemployment Insurance	
<input type="checkbox"/> Employment Authorization	
<input type="checkbox"/> Other (specify)	

9. Name of Submitting Official

10. Title of Submitting Official

11. Date

12. Telephone Number

## INS RESPONSE: From the documents or information submitted and/or a review of our records we find that:

1. ☐ This document appears valid and relates to a **Lawful Permanent Resident** alien of the United States.
2. ☐ This document appears valid and relates to a **Conditional Resident** alien of the United States.
3. ☐ This document appears valid and relates to an alien **authorized employment** as indicated below:
- a. ☐ Full-Time
- b. ☐ Part-Time
- c. ☐ No Expiration (Indefinite)
- d. ☐ Expires on (specify Month/Day/Year, below)
4. ☐ This document appears valid and relates to an alien who has an application pending for (specify INS benefit below)
5. ☐ This document relates to an alien having been granted **asylum/refugee** status in the United States.
6. ☐ This document appears valid and relates to an alien **paroled** into the United States pursuant to Section 212 of the I&N Act.
7. ☐ This document appears valid and relates to an alien who is a **Cuban/Haitian entrant**.
8. ☐ This document appears valid and relates to an alien who is a **conditional entrant**.
9. ☐ This document appears valid and relates to an alien who is a **nonimmigrant** (specify type or class below)
10. ☐ This document appears valid and relates to an alien **not authorized employment** in the United States.
11. ☐ Continue to process as legal alien. INS is searching indices for further information.
12. ☐ This document is **not valid** because it appears to be (check all that apply)
- a. ☐ Expired
- b. ☐ Altered
- c. ☐ Counterfeit

INS Stamp

Form G-845S (Rev. 06/06/89) Y

☐ Please see reverse for additional comments.

**Comments**

13. ☐ No determination can be made from the information submitted. Please obtain a copy of the **original** alien registration documentation and resubmit.
14. ☐ No determination can be made without seeing **both** sides of the document submitted (*please resubmit request*).
15. ☐ Copy of document is not readable (*please resubmit request*).

**"PRUCOL"**

For Purposes Of Determining If Alien Is Permanently Residing Under Color Of Law Only!

16. ☐ INS actively pursues the expulsion of an alien in this class/category.
17. ☐ INS is **not** actively pursuing the expulsion of an alien in this class/category, at this time.
18. ☐ Other

**Instructions**

- **Submit copies of both front and back of alien's original documentation.**
- **Make certain a complete return address has been entered in the "From" portion of the form.**
- **The Alien Registration Number ("A" Number) is the letter "A" followed by a series of (7) or (8) digits. Also in this block may be recorded the number found on Form I-94. (Check the front and back of the I-94 document and if the "A" Number appears, record that number when requesting information instead of the longer admission number as the "A" Number refers to the most integral record available.)**
- **If Form G-845 is submitted without copies of applicant's original documentation, it will be returned to the submitting agency without any action taken.**
- **Address this verification request to the local office of the Immigration and Naturalization Service.**

### **Exhibit 4-3: Race and Ethnic Data Reporting Form**

**NOTE:** See next page

# Race and Ethnic Data Reporting Form

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 2502-0204  
(Exp. 10/31/2004)

Name of Property	Project No.	Address of Property
Name of Owner/Managing Agent		Type of Assistance or Program Title:
Name of Head of Household		Name of Household Member

Date (mm/dd/yyyy): \_\_\_\_\_

Race/Ethnic Categories	Select One
Hispanic or Latino	
Not-Hispanic or Latino	
Race/Ethnic Categories	Select One
American Indian or Alaska Native	
Asian	
Black or African American	
Native Hawaiian or Other Pacific Islander	
White	
Other	

**\*Definitions of these categories may be found on the reverse side.**

**There is no penalty for persons who do not complete the form.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Public reporting burden** for this collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is required to obtain benefits and voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information is authorized by the U.S. Housing Act of 1937 as amended, the Housing and Urban Rural Recovery Act of 1983 and Housing and Community Development Technical Amendments of 1984. This information is needed to be in compliance with OMB-mandated changes to Ethnicity and Race categories for recording the 50059 Data Requirements to HUD. Owners/agents must offer the opportunity to the head and co-head of each household to "self certify" during the application interview or lease signing. In-place tenants must complete the format as part of their next interim or annual re-certification. This process will allow the owner/agent to collect the needed information on all members of the household. Completed documents should be stapled together for each household and placed in the household's file. Parents or guardians are to complete the self-certification for children under the age of 18. Once system development funds are provided and the appropriate system upgrades have been implemented, owners/agents will be required to report the race and ethnicity data electronically to the TRACS (Tenant Rental Assistance Certification System). This information is considered non-sensitive and does not require any special protection.

form HUD-27061-H (9/20/2003)

## Instructions for the Race and Ethnic Data Reporting (Form HUD-27061-H)

### A. General Instructions:

This form is to be completed by individuals wishing to be served (applicants) and those that are currently served (tenants) in housing assisted by the Department of Housing and Urban Development.

Owner and agents are required to offer the applicant/tenant the option to complete the form. The form is to be completed at initial application or at lease signing. In-place tenants must also be offered the opportunity to complete the form as part of the next interim or annual recertification. Once the form is completed it need not be completed again unless the head of household or household composition changes. There is no penalty for persons who do not complete the form. However, the owner or agent may place a note in the tenant file stating the applicant/tenant refused to complete the form. **Parents or guardians are to complete the form for children under the age of 18.**

The Office of Housing has been given permission to use this form for gathering race and ethnic data in assisted housing programs. Completed documents for the entire household should be stapled together and placed in the household's file.

1. The two ethnic categories you should choose from are defined below. You should check one of the two categories.
  1. **Hispanic or Latino.** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."
  2. **Not Hispanic or Latino.** A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
2. The five racial categories to choose from are defined below: You should check as many as apply to you.
  1. **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
  2. **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam
  3. **Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."
  4. **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
  5. **White.** A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

## Glossary

### 50059 Data Requirements

The 50059 data requirements list and describe the data that owners are required to collect from applicants and tenants, and the calculations owners must perform to certify tenant eligibility and tenant rents. This data is submitted electronically to the Tenant Rental Assistance Certification Systems (TRACS) through Contract Administrators or HUD. The 50059 data requirements replace Form HUD-50059. A *facsimile* is a paper copy printed out of TRACS compliant software.

### Accessible (FH Act)

When used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical impairments (handicaps).<sup>1</sup> The phrase *readily accessible to*, and *usable by*, is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is accessible within the meaning of this paragraph. [24 CFR 100.201]

### Accessible (Section 504)

When used with respect to the design, construction, or alteration of a *facility or a portion of a facility other than an individual dwelling unit*, means that the facility or portion of the facility, when designed, constructed, or altered, can be approached, entered, and used by individuals with a physical impairment (handicaps).<sup>1</sup> The phrase *accessible to*, and *usable by*, is synonymous with accessible. [24 CFR 8.3]

Accessible, when used with respect to the design, construction, or alteration of an *individual dwelling unit*, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with a physical impairment (handicaps).<sup>1</sup> A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified person with a disability (handicaps)<sup>1</sup> (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person. [24 CFR 8.3]

**Accessible Route  
(FH Act)**

A continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is an accessible route. [24 CFR 100.201]

**Accessible Route  
(Section 504)**

A continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by 24 CFR 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments. [24 CFR 8.3]

**Adaptability  
(Section 504)**

The ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities (handicaps),<sup>1</sup> or different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed, but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person. [24 CFR 8.3]

**Adjusted Income**

Annual income (as determined by the owner) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions.

In determining adjusted income, the owner must deduct the following amounts from annual income:

1. \$480 for each dependent;
2. \$400 for any elderly family or disabled family;
3. The sum of the following, to the extent the sum exceeds 3% of annual income:
  - a. Unreimbursed reasonable medical expenses of any elderly family or disabled family; and



- b. Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older who are able to work because of such attendant care or auxiliary apparatus; and
- 4. Any reasonable child care expenses necessary to enable the family member to be employed or to further his or her education. [24 CFR 5.611]

**Adult**

An individual who is 18 years of age or older or a minor under the age of 18 who has been emancipated to act on his/her own behalf, including the ability to execute a contract or lease.

**Alteration  
(Section 504)**

Any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts, and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. [24 CFR 8.3]

**Annual Income**

All amounts, monetary or not, which:

- 1. Go to, or on behalf of, the family head or spouse [or co-head] (even if temporarily absent) or to any other family member; or
- 2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual re-examination effective date; and
- 3. Which are not specifically excluded [by regulation].

Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access. [24 CFR 5.609]

**Applicant**

A person or a family that has applied for housing assistance. [24 CFR 5.403]

**Application**

A written request for occupancy in a subsidized housing unit that includes the information required to determine eligibility for assistance and suitability for tenancy. Owners generally develop a standardized form that is completed by the prospective applicant. The application must be signed and dated by the applicant and include the applicant's certification that the information provided is complete and accurate.

<b>Assets</b>	For more information on what is considered an asset and what is not an asset, see Exhibit 5-2.
<b>Assistance Payment</b>	The amount HUD pays the owner for a unit occupied by a Section 8, RAP, Rent Supplement, or PAC tenant. It includes HUD's share of the contract rent and any utility reimbursement due the tenant. It is the gross rent for the unit minus the Total Tenant Payment (TTP). The assistance payment for an occupied PRAC unit is the operating rent minus the TTP.
<b>Assisted Rent</b>	Any rent less than the market rent. Includes Section 236 rents that are greater than the basic rent.
<b>Assisted Tenant</b>	A tenant who pays less than the market rate. Includes tenants: <ol style="list-style-type: none"> <li>1. Receiving Rent Supplement, RAP, PAC, or Section 8 assistance;</li> <li>2. Living in a Section 202 PRAC or Section 811 PRAC development paying equal to or less than the operating rent;</li> <li>3. Living in a Section 202 PRAC or Section 811 PRAC development paying more than the operating rent, which generates excess income;</li> <li>4. Paying the BMIR contract rent;</li> <li>5. Paying the Section 236 basic rent; or</li> <li>6. Paying above basic rent, which generates excess income, but less than market rent, in a Section 236 project.</li> </ol>
<b>Assistance Animals</b>	Assistance animals are animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provide emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals – often referred to as “service animals,” “assistive animals,” “support animals,” or “therapy animals” – perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed as a reasonable accommodation by the person with the disability.

**Auxiliary Aids  
(Section 504)**

Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, notetakers, written materials, and other similar services and devices. [24 CFR 8.3]

**Basic Rent**

The minimum rent all tenants in a Section 236 project must pay. It is HUD approved and represents the amount of rent the owner needs to receive in order to operate the property with the mortgage interest rate reduced to as low as 1%.

**Briefing**

A meeting between the owner and the tenant prior to signing the lease during which the owner discusses various topics related to living in the unit. Topics include, but are not limited to, tenant rights, house rules, and lease terms.

**Chronically Mentally  
III**

Use this definition for the Section 202 and Section 811 programs only.

An adult who has a chronic mental illness, i.e., if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently (e.g., by limiting functional capacities relative to primary aspects of daily living such as personal relations, living arrangements, work, recreation, etc.), and whose impairment could be improved by more suitable housing conditions. See 24 CFR 891.305 and 891.505

**Citizen**

A citizen or national of the United States. [24 CFR 5.504] (See definition of National.)

**Co-Head of Household**

An adult member of the family who is treated the same as a head of the household for purposes of determining income, eligibility, and rent. (See paragraph 5.6 for explanation of *emancipated minor*.)

**Common Household  
Pet**

A domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pets do not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulations shall apply. This definition does not include animals that are used to assist persons with disabilities. [24 CFR 5.306]

**Contract  
Rent**

The rent HUD or the Contract Administrator has approved for each unit type covered under an assistance contract. The rent may be paid by the tenant, HUD, or both. Refer to the project's rental schedule (form HUD-92458) or Rental Assistance contract for exact amounts.

**Covered Person**

A tenant, any member of the tenant's household, a guest, or another person under the tenant's control. [24 CFR 5.100]

**Currently Engaging In**

With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, *currently engaging in* means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current. [24 CFR 5.853]

**Deductions**

In determining adjusted income, the owner must deduct the following from annual income:

1. \$480 for each dependent;
2. \$400 for any elderly family or disabled family;
3. The sum of the following to the extent the sum exceeds 3% of annual income:
  - a. Unreimbursed medical expenses of any elderly or disabled family; and
  - b. Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with a disability) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

4. Any reasonable child care expense necessary to enable the family member to be employed or to further his or her education. [24 CFR 5.611]

**Denial of Tenancy  
or Assistance**

The process of rejecting an applicant's request for either occupancy or assistance because the household does not meet eligibility criteria for the program or the owner's criteria for suitability for tenancy.

**Dependent**

A member of the family other than the head, spouse, or co-head, who is under 18 years of age or is a person with disabilities or a full-time student. For the purposes of this Handbook, a foster child, a foster adult, or a live-in aide may never be a dependent regardless of age or disability.

**Developmentally  
Disabled**

Meets the conditions of paragraph 2 under the definition for Person with a Disability. [24 CFR 891.505]

**NOTE:** The referenced definition also appears as Definition H in Figure 3-6 in this handbook.

**Disability (Handicap)<sup>1</sup>  
(Section 504) [as  
defined for Civil Rights  
Protections]**

Any condition or characteristic that renders an individual *a person with disabilities* (handicaps).<sup>1</sup> [24 CFR 8.3]

**Disabled Family**

[Also appears as Definition D – Disabled Family in Figure 3-6.]

A family whose head, spouse, or sole member is a person with disabilities (as defined by 24 CFR 5.403). It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides. [24 CFR 5.403] (See definition of Person with Disabilities as defined for program eligibility purposes.)

**Disabled  
(Handicapped)<sup>1</sup> Family** [Also appears as G – Disabled (Handicapped) Family in Figure 3-6.]

1. Families of two or more persons the head of which (or his or her spouse) is a person with disabilities (handicapped)<sup>1</sup>;

2. The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under 24 CFR 891, subpart E (Section 202 loans) with the deceased member of the family at the time of his or her death;
3. A single person with disabilities (handicapped person)<sup>1</sup> over the age of 18; or
4. Two or more persons with disabilities (handicapped person)<sup>1</sup> living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well-being. [24 CFR 891.505]

**Disabled Household** [Also appears as F – Disabled Household in Figure 3-6.]

Disabled household means a household composed of:

1. One or more persons at least one of whom is an adult (18 years or older) who has a disability;
2. Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or
3. The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part with the deceased member of the household at the time of his or her death. [24 CFR 891.305]

**Displaced Family** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws. [24 CFR 5.403]

**Displaced Person** A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. [24 CFR 5.403]

**Drug** A controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). [24 CFR 5.100]

**Drug-related  
Criminal Activity**

The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug. [24 CFR 5.100]

**Elderly Family**

[Also appears as Definition B – Elderly Family in Figure 3-6.]

1. Families of two or more persons, the head of which (or his or her spouse) is 62 years of age or older;
2. The surviving member or members of a family described in paragraph (1) living in a unit assisted under 24 CFR part 891, subpart E (Section 202 loans) with the deceased member of the family at the time of his or her death;
3. A single person who is 62 years of age or older; or
4. Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being. [24 CFR 891.505]

**Elderly Family**

[Also appears as Definition A – Family & Elderly Family in Figure 3-6.]

A family (as defined in 24 CFR 5.403) whose head, spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides. [24 CFR 5.403]

**Elderly Person**

[Also appears as Definition C – Elderly Person in Figure 3-6.]

An elderly person is a household composed of one or more persons, at least one of whom is 62 years of age or more at the time of initial occupancy. [24 CFR 891.205]

**Elderly Person**

A person at least 62 years of age. [24 CFR 5.100]

**Eligible Noncitizen**

A person who has eligible immigration status in one of the following categories:

1. A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and U.S.C. 1101(a)(15), respectively) [immigrants]. (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161) [special agricultural worker], who has been granted lawful temporary resident status);

2. A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);
3. A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) [refugee status]; pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) [asylum status]; or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;
4. A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) [parole status];
5. A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) [threat to life or freedom];
6. A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) [amnesty granted under INA 245A]; or
7. A noncitizen who is a lawful resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia and Palau (collectively referred to as "the Freely Associated States" (FAS)) [Section 3(b) of Public Law 106-504].

A nonimmigrant student, while lawfully admitted to the United States, is not eligible.

## Eviction

The dispossession of the tenant from the leased unit as a result of the termination of tenancy, including a termination prior to the end of a lease term. [24 CFR 247.2]



**Evidence of  
Citizenship or  
Eligible Status**

The documents that must be submitted to evidence citizenship or eligible immigration status. [24 CFR 5.504] See paragraph 3-12 of this handbook for further information.

**Expected to Reside**

In applying lead-safe housing requirements, actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a female resident is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit. [24 CFR 35.110]

**Extremely Low-Income  
Family**

A family whose annual income does not exceed 30% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30% of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes. [24 CFR 5.603]

**Fair Housing Act**

Title VIII of the Civil Rights Act, 42 U.S.C. 3601. The Fair Housing Act is a broad statute that prohibits discrimination based upon race, color, religion, sex, national origin, disability, or familial status in most housing and housing-related transactions.

**Familial Status  
(FH Act)**

One or more individuals (who have not attained the age of 18 years) being domiciled with:

1. A parent or another person having legal custody of such individual or individuals (regardless of age or number of children); or
2. The designee of such parent or other person having such custody, with the written permission of such parent or another person.

*The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. [24 CFR 100.20]*

**Family**

[Also appears as Definition A – Family & Elderly Family of Figure 3-6.]

A family includes but is not limited to:

1. A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);
2. An elderly family;

3. A near-elderly family;
4. A disabled family;
5. A displaced family;
6. The remaining member of a tenant family; and
7. A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family. [24 CFR 5.403]

**Family Composition**

The specific individuals who are included in the assisted family. Information on family composition includes names, ages, sexes, and citizenship status of all members and their relationship to one another.

**Federal Financial  
Assistance  
(Section 504)**

Any assistance provided or otherwise made available by the Department through any grant, loan, contract, or any other arrangement, in the form of:

1. Funds;
2. Services of Federal personnel; or
3. Real or personal property or any interest in or use of such property, including:
  - a. Transfers or leases of the property for less than fair market value or for reduced consideration; and
  - b. Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

Federal financial assistance includes community development funds in the form of proceeds from loans guaranteed under Section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty. [24 CFR 8.3]

**Federally  
Assisted Housing**

Includes housing assisted under any of the following programs:

1. Public housing;

2. Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);
3. Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);
4. Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;
5. Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);
6. Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act of (12 U.S.C. 1715(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715(d)(5));
7. Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or
8. Housing assisted by the Rural Housing Service under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484). [24 CFR 5.100]

**Foster Adult**

A foster adult is usually an adult with a disability who is unrelated to the tenant family and who is unable to live alone.

**Foster Children**

Children that are in the legal guardianship or custody of a State, county, or private adoption or foster care agency, yet are cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency. These children will generally remain in foster care until they are reunited with their parents, or until their parents voluntarily consent to their adoption by another family, or until the court involuntarily terminates or severs the parental right of their biological parents, so that they can become available to be adopted by another family. Therefore, the parental rights of the parents of these children may or may not have been terminated or severed, and the children may or may not be legally available for adoption.

**Fraud**

Deceit or trickery deliberately practiced to gain some advantage dishonestly. Fraud is an intentional deception and cannot be committed accidentally.

**NOTE:** This is not necessarily the legal definition in particular cases.

<b>Full-Time Student</b>	A person who is attending school or vocational training on a full-time basis. [24 CFR 5.603]
<b>Gross Rent</b>	The gross rent for a unit equals the contract rent plus the utility allowance, if the property has a utility allowance. For Section 202 PRAC and Section 811 PRAC, the gross rent is referred to as the operating rent.
<b>Gross Rent Change</b>	Any HUD-approved change in the contract rent or the utility allowance for a unit.
<b>Guest</b>	A person temporarily staying in a unit with the consent of the tenant or another member of the household who has express or implied authority to consent on behalf of the tenant. [24 CFR 5.100] A guest is a temporary visitor of the tenant's and should not be confused with an unauthorized occupant. Additionally, a guest is not a party to the lease agreement.
<b>Hardship Exemption</b>	An exemption from the \$25 minimum rent an owner must provide for any household unable to pay the Section 8 minimum rent due to a long-term financial hardship as defined in the regulation. [24 CFR 5.630]
<b>Head of Household</b>	The adult member of the family who is the head of the household for purposes of determining income eligibility and rent. (See paragraph 5.6 for explanation of emancipated minor.) [24 CFR 5.504]
<b>Household</b>	The family and live-in aide, if applicable.
<b>Housing Assistance Payment (HAP)</b>	The payment made by HUD or the Contract Administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment," may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract. [24 CFR 880.201]
<b>Income Limit</b>	HUD establishes income limits that are used to determine whether housing applicants qualify for admission to HUD-subsidized properties. These income limits are based on HUD estimates for area median family income with certain statutorily permissible adjustments. Different programs use different income limits. (See paragraph 3-6 for applicability.)

**Income-Targeting**

A statutory requirement that at least 40% of new admissions to a Section 8 property in each fiscal year be households with incomes at or below 30% of the area median income. The law ensures that a significant portion of federal housing assistance goes to families with the greatest need. [24 CFR 5.601, 5.603, 5.653]

**Increased Ability to Pay**

An increase in the tenant's income to a point where the total tenant payment is equal to or greater than the contract rent, plus any utility allowance, for the unit. An increased ability to pay does not apply to Section 202 PRAC or Section 811 PRAC properties.

**\*Independent Student**

To be classified as an independent student for Title IV aid, a student must meet one or more of the following criteria:

1. Be at least 24 years old by December 31 of the award year for which aid is sought;
2. Be an orphan or a ward of the court through the age of 18;
3. Be a veteran of the U.S. Armed Forces;
4. Have legal dependents other than a spouse (for example, dependent children or an elderly dependent parent);
5. Be a graduate or professional student; or
6. Be married. \*

**Law Enforcement Agency**

The National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. [24 CFR 5.902]

**Lease**

A written agreement between an owner and a family for the leasing of a decent, safe, and sanitary dwelling unit to the family. [24 CFR 886.102 and 884.102]

**Lease Term**

The period of time for which a lease agreement is written.

**Legitimate Tenant Organization**

An organization established by the tenants of a multifamily housing project covered by this handbook, whose purpose includes addressing issues related to terms and conditions of their tenancy, and which meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives. [CFR 24 245.110]

**Live-in Aide**

A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

1. Is determined to be essential to the care and well-being of the persons;
2. Is not obligated for the support of the persons; and
3. Would not be living in the unit except to provide the necessary supportive services. [24 CFR 5.403]

**Low-Income Family**

A family whose annual income does not exceed 80 percent of the area median income, as determined by HUD, with adjustments for smaller and larger families. [24 CFR 5.603]

**Management Agent**

An entity that has day-to-day frontline responsibilities for a HUD-insured and/or assisted multifamily housing property. The project owner is responsible for seeking out and selecting a management agent that meets the standards outlined in Handbook 4381.5, Chapter 2. The HUD-owner-management agent relationship is defined and subject to the requirements and procedures set forth in HUD Handbook 4381.5.

**Market Area**

The geographic area from which a project owner could reasonably expect to draw applicants, based on the services and amenities offered by the development and the needs of the community.

**Market Rent**

The rent HUD authorizes the owner to collect from families ineligible for assistance. For Section 236 units, the market rent is shown on the project's HUD-approved rent schedule. For Rent Supplement, Section 202, and Section 8 units, the market rent is the same as the contract rent. For BMIR units, market rent varies by whether the project is a rental or cooperative.

1. BMIR Rentals. Market rent equals 110% of the BMIR rent.

2. **BMIR Cooperatives.** Cooperatives use the term "carrying charge" to describe the amount charged a cooperative member for occupying a unit. Market carrying charges equal the contract carrying charge plus any surcharge established by the cooperative and approved by HUD. If the cooperative has not received HUD approval of a plan for surcharging its over-income members, the market carrying charge equals 110% of the contract carrying charge.

**Minimum Rent**

The lowest total tenant payment permitted for tenants receiving Section 8 assistance. The minimum rent is \$25 and is used when 30% of adjusted monthly income and 10% of gross monthly income and the welfare rent (where applicable) are all below \$25. The minimum rent covers the tenant's contribution for rent and utilities.

**Mixed Family**

A family whose members include those with citizenship or eligible immigration status and those without citizenship or eligible immigration status. [24 CFR 5.504] (See also Prorated Assistance.)

**National**

A person who owes permanent allegiance to the United States; for example, as a result of birth in a United States territory or possession. [24 CFR 5.504]

**Near-Elderly family**

A family whose head, spouse, or sole member is a person who is at least 50 years of age, but below the age of 62; two or more persons who are at least 50 years of age, but below the age of 62, living together; or one or more persons who are at least 50 years of age, but below the age of 62, living with one or more live-in aides. [24 CFR 5.403]

**Noncitizen**

A person who is neither a citizen nor a national of the United States. [24 CFR 5.504]

**Nonelderly Disabled (Handicapped<sup>1</sup>) Family**

[Also appears in Definition I – Nonelderly Disabled (Handicapped) Family in Figure 3-6.]

A disabled (handicapped<sup>1</sup>) family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project. [24 CFR 891.505]

**Operating Rent (PRAC)**

The total of the contract rent plus the utility allowance. If there is no utility allowance, contract rent equals operating rent. It is the total monthly cost of housing an eligible family.

**Other Person Under the Tenant's Control**

The person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control. [24 CFR 5.100]

**PAC (Project Assistance Contract)**

The contract entered into by the borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC. See paragraph 1-3 of this handbook for further description. [24 CFR 891.655]

**Person with Disabilities** [as defined for Civil Rights Protections]

[NOTE: The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act and their implementing regulations, define an individual or person with a disability in virtually the same language. Section 504's definition of disability (handicap) is found at 24 CFR 8.3. The Fair Housing Act definition is found at 24 CFR 100.201, and the ADA definition is found at 28 CFR 35.104.]

A person with a disability is any person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

The definition does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the housing program or activities, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

As used in this definition, the phrase "physical or mental impairment" includes:



1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; drug addiction; and alcoholism.
3. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a person as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment; or
3. Has none of the impairments defined in this section but is treated by a person as having such an impairment.

**Person with Disabilities** [as defined for program eligibility purposes]

[Also appears as Definition E – Person with Disabilities in Figure 3-6.]

1. A person who:
  - a. Has a disability, as defined in 42 U.S.C. 423;
    - 1) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

- 2) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness, as defined in section 416(i)(1) of this title, means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.
- b. Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
    - 1) Is expected to be of long-continued and indefinite duration;
    - 2) Substantially impedes his or her ability to live independently; and
    - 3) Is of such nature that the ability to live independently could be improved by more suitable housing conditions; or
  - c. Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that
    - 1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
    - 2) Is manifested before the person attains age 22;
    - 3) Is likely to continue indefinitely;
    - 4) Results in substantial functional limitation in three or more of the following areas of major life activity:

- a) Self-care,
  - b) Receptive and expressive language,
  - c) Learning,
  - d) Mobility,
  - e) Self-direction,
  - f) Capacity for independent living, and
  - g) Economic self-sufficiency; and
- 5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
2. Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
3. For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
4. Means person with disabilities (individual with handicaps)<sup>1</sup> as defined by 24 CFR 8.3 (Section 504), for purposes of reasonable accommodation and program accessibility for persons with disabilities. [24 CFR 5.403]

**Person with  
Disabilities**

**(Handicapped person)<sup>1</sup>**  
[as defined for program  
eligibility purposes]

[Also appears in Definition H – Person with a Disability (Handicapped Person) in Figure 3-6.]

A person with disabilities means:

1. Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.
2. A person with a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)), i.e., a person with a severe chronic disability that:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

- b. Is manifested before the person attains age 22;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitation in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;
    - (4) Mobility;
    - (5) Self-direction;
    - (6) Capacity for independent living;
    - (7) Economic self-sufficiency; and
  - e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
3. A person with a chronic mental illness, i.e., person who has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.
  4. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in the Section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability.

**NOTE:** A person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the Section 202 and Section 811 programs. [24 CFR 891.305 and 891.505]

### **Pet Deposit**

An owner may require tenants who own or keep pets in their units to pay a refundable pet deposit.

**NOTE:** For complete information on pet deposits see 24 CFR 5.318.

<b>Physical Disability</b>	A physical impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability to live independently could be improved by more suitable housing conditions.
<b>PRAC (Project Rental Assistance Contract)</b>	The contract entered into by the owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC. PRAC is used for Section 202 and Section 811 projects. See paragraph 1-3 of this handbook for further description. [24 CFR 891.105]
<b>PRAC Operating Rent</b>	See Operating Rent (PRAC).
<b>Preferences</b>	Established criteria used to determine the order applicants are selected from the waiting list for housing assistance or an assisted housing unit. Preferences may be established by federal law, HUD regulations, State or local law, or written owner policy. [24 CFR 5.601; 5.655; 236.715; 880.603; 880.612a; 881.601; 883.701; 884.214; 884.223a; 886.132; 886.337; 886.329a; 891.230; 891.750]
<b>Preliminary Application</b>	An abbreviated application form that is used by some owners when the waiting time for an available unit is extensive and requires only enough information to assess apparent program eligibility, place the applicant on a waiting list, and contact the applicant when a unit becomes available or additional information is required.
<b>Premises</b>	The building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds. [24 CFR 5.100]
<b>Prohibited Bases</b>	Civil rights statutes establish the demographic categories by which discrimination is prohibited. HUD refers to these categories as "prohibited bases." For instance, under the Fair Housing Act, the prohibited bases are race, color, religion, sex, national origin, familial status, and disability. It is more inclusive and explanatory than the term "protected classes," because it does not categorize people into sets of classes (e.g., male, female, White, Black, Asian, Native American, Pacific Islander, Hispanic, Non-Hispanic, Christian, Jewish, Muslim, Buddhist).

**Project Assistance Payment**

The payment made by HUD to the borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a "vacancy payment," may be made to the borrower when an assisted unit (or resident space in a group home) is vacant, in accordance with the terms of the PAC. [24 CFR 891.655]

**Project Rental Assistance Payment**

The payment made by HUD to the owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per-unit operating expenses, except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment," may be made to the owner when an assisted unit is vacant, in accordance with the terms of the PRAC. [24 CFR 891.105]

**Prorated Assistance**

Partial rental assistance, or reduced housing assistance payments received by mixed families. In mixed families, the level of assistance is calculated at the ratio of eligible family members to ineligible family members.

**Protected Classes**

Demographic categories of persons established by civil rights statutes against whom discrimination is prohibited. (See also Prohibited Bases.)

**Qualified Persons with Disabilities (Individual with Handicaps)<sup>1</sup>**

An individual with disabilities (handicaps)<sup>1</sup> who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. "Essential eligibility requirements" include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not

be "qualified" for a project lacking such services. *[Relevant language excerpted from 24 CFR 8.3]*

**RAP (Rental Assistance Payment)**

A rental assistance subsidy program established by the Housing and Community Development Act of 1974 to provide additional rental assistance subsidy to project owners on behalf of very low-income tenants. RAP was available only to Section 236 projects and was the predecessor to the project-based Section 8 program.

**Recertification Anniversary Date**

Generally, the recertification anniversary date is the first day of the month a tenant moved into a project receiving HUD assistance. As long as an owner processes an annual recertification according to the procedures and deadlines required in Chapter 7, changes in the TTP, tenant rent, and assistance payment take effect on the recertification anniversary date.

**Recipient (Section 504)** Any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments. *[24 CFR 8.3]*

**Remaining Member of a Tenant Family**

See paragraph 3-15 for a discussion of the eligibility of a remaining member of a tenant family.

**Rent Supplement**

A project-based assistance program for mortgages insured by HUD. These contracts were available to Section 221(d)(3) BMIR, Section 231, Section 236 (insured and noninsured), and Section 202 projects for the life of the 40-year mortgage. The program was suspended under the housing subsidy moratorium of January 5, 1973. Owners of insured projects with Rent Supplement were allowed to convert to project-based Section 8 assistance.

**Residency Preference**

A preference for admission of persons who reside in a specified geographic area ("residency preference area"). *[24 CFR 5.655 (c)(1)(ii)]*

**Rural Housing Service (RHS)**

U.S. Department of Agriculture, Rural Housing Services.

<b>Screening</b>	A review of an applicant's history to identify patterns of behavior that, if exhibited at the assisted housing development, would make the applicant an unsuitable tenant. Screening criteria may include consideration of drug-related or criminal activity, tenancy, credit and rent payment history, or other behaviors that may affect the rights of other residents and management.
<b>Section 504</b>	Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance. [24 CFR 8.3]
<b>Section 8</b>	The housing assistance payments program that implements Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note). [24 CFR 891.505]
<b>Security Deposit</b>	A payment required by an owner to be held during the term of the lease (or the time period the tenant occupies the unit) to offset damages incurred due to the actions of the tenant. Such damages may include physical damage to the property, theft of property, and failure to pay back rent. Forfeiture of the deposit does not absolve the tenant of further financial liability.
<b>Service Animals</b>	See Assistance Animals.
<b>Service Bureaus</b>	<p>These organizations prepare:</p> <ol style="list-style-type: none"><li>1. Monthly subsidy voucher facsimiles based on the 50059 data requirements, and</li><li>2. Approved special claims and transmit them to the user's Contract Administrator or TRACS for processing and payment.</li></ol> <p>Otherwise, the service bureau will follow instructions received from HUD or the Contract Administrator on special claim payments. In instances where the software being used to double-check calculations before transmission discovers errors in the 50059 data requirements provided, these organizations print out revised 50059 data requirements and return the revised documentation to their sites for appropriate action.</p> <p>Service bureaus may provide their users with the monthly benefit history reports used in annual recertifications, as well as returning TRACS messages received from the Contract Administrator or TRACS.</p> <p><b>NOTE:</b> Service bureaus are organizations that provide a number of different services and are paid a fee to do so. Their users (owners and management agents) are responsible for the verification of information contained on the 50059 facsimiles they provide to their</p>



service bureau. The bureaus transmit tenant certifications to TRACS or to Contract Administrators using TRACS-compliant software. If a service bureau determines that data elements provided by the site are incorrect, the bureau will transmit the correct data to TRACS and return a correct facsimile to the sites for signature by the household and management and for copying and filing in the tenant file.

<b>Tenant</b>	An individual or a family renting or occupying an assisted dwelling unit. [24 CFR 5.504]
<b>Tenant Consultation</b>	Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. This process is called Tenant Consultation. [24 CFR 5.353]
<b>Tenant Rent</b>	<p>The amount payable monthly by the family as rent to the owner.</p> <ol style="list-style-type: none"> <li>1. Where all utilities (except telephone) and other essential housing services are supplied by the owner, tenant rent equals total tenant payment.</li> <li>2. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner, tenant rent equals total tenant payment less the utility allowance.</li> </ol>
<b>Tenant Selection Plan</b>	A formal written policy statement, developed by the owner and available to the public, that clearly states the procedures and criteria the owner will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, implementing income targeting requirements, and offering housing assistance and/or assisted housing units. The Tenant Selection Plan also includes policies applied to residents of the property such as how unit transfers are carried out.
<b>Tenant with a Disability</b>	See the three definitions of Person with Disabilities.
<b>Termination of Assistance</b>	When a tenant fails to comply with certain HUD program requirements, the owner, under agreements with HUD, is obligated to terminate the assistance provided by HUD on behalf of that tenant.

**Termination of Tenancy**

Termination of tenancy occurs when a tenant violates specific provisions of the lease agreement, and the owner notifies the tenant that he/she no longer has the right to occupy the unit as a result of lease violations. The HUD model leases have very specific conditions under which tenancy may be terminated and procedures that must be followed during the termination process. (See model leases in Appendix 4 and guidance in Chapter 8, Termination.)

**Title VI-D**

Title VI, Subtitle D of the Housing and Community Development Act of 1992 authorizes owners of certain HUD multifamily assisted developments to elect to serve elderly families, to limit the numbers of disabled families residing in a project or to adopt preferences for elderly families, depending upon the type of project and whether certain requirements are met. See paragraph 2-10 for a discussion on the applicability of this Act.

**Total Tenant Payment**

The total amount the HUD rent formula requires the tenant to pay toward the gross rent. Total Tenant Payment is computed in accordance with the formula in Exhibit 5-9.

**Total Tenant Payment (Resident Rent Payment)**

Each family or individual who receives PRAC subsidy must make a total tenant payment of 30% of adjusted income, 10% of gross income, or Welfare Rent, whichever is greater, for housing costs, i.e., rent and utilities. In some cases, a resident's monthly rent payment may exceed the PRAC operating rent. As with HAP contracts:

1. The monthly amount a resident pays the owner should be the Total Tenant Payment less any HUD-approved utility allowance the tenant pays; and
2. The resident may receive a utility reimbursement from the owner if the resident's Total Tenant Payment is less than the HUD-approved utility allowance.

**Unauthorized Occupant**

A person who, with the consent of a tenant, is staying in the unit, but is not listed on the lease documents or approved by the owner to dwell in the unit. An owner must follow State or local law regarding an unauthorized occupant and establish an equitable and consistent policy and incorporate that policy into the house rules.

**Unearned Income**

Income received that is not wages, tips, or other compensation for work performed.

<b>Unintentional Program Violation</b>	An error or oversight by the tenant that does not involve deliberate, intentional deceit. (See also Fraud.)
<b>Unit Transfer</b>	With owner approval, a tenant moves from one unit to another unit within the same property.
<b>Utility Allowance</b>	HUD's or the Contract Administrator's estimate of the average monthly utility bills (except telephone) for an energy-conscious household. This estimate considers only utilities paid directly by the tenant. If all utilities are included in the rent, there is not a utility allowance. Utility allowances vary by unit type and are listed on the project's rent schedule or HAP contract.
<b>Utility Allowance (PRAC)</b>	This is an amount equal to the estimate made or approved by HUD of the monthly costs of a reasonable consumption of utilities (except telephone) for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary, and healthful living environment. A utility allowance is used in cases where the cost of utilities (except telephone) is the responsibility of the household and is not included in the tenant payment.
<b>Utility Reimbursement</b>	The amount, if any, by which the utility allowance for a unit exceeds the total tenant payment for the family occupying the unit.
<b>Very Low-Income Family</b>	A very low-income family is a family whose annual income does not exceed 50 percent of the area median income, as determined by HUD, with adjustments for smaller and larger families. [24 CFR 5.603]
<b>Violent Criminal Activity</b>	Any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage. [24 CFR 5.100]
<b>Waiting List</b>	A formal record of applicants for housing assistance and/or assisted housing units that identifies the applicant's name, date and time of application, selection preferences claimed, income category, and the need for an accessible unit. The waiting list may be kept in either a bound journal or a computer program. Whichever method is used to maintain the waiting list, the owner must establish a method of documenting the appropriate selection of applicant names from the list.

**Welfare Assistance**

Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly by the Federal, State, or local government. [24 CFR 5.603]

**Welfare Rent**

In those States in which the welfare grant is based on the actual amount a family pays for shelter and utilities, the welfare rent is the maximum amount permitted under welfare rule for rent and utilities.

<sup>1</sup> The term *handicapped* appears in a number of regulatory definitions that have not yet been updated to reflect current statutes. In this handbook, HUD replaced *handicapped* with the term *disabled, disability, or impairment* to reflect current statutes. The parenthetical reference to *handicapped* indicates that the term *handicapped* has been replaced with *disabled, disability, or impairment* in that definition.

